

1 STATE OF MINNESOTA DISTRICT COURT

2 COUNTY OF RAMSEY SECOND JUDICIAL DISTRICT

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4 The State of Minnesota,

5 by Hubert H. Humphrey, III,

6 its attorney general,

7 and

8 Blue Cross and Blue Shield

9 of Minnesota,

10 Plaintiffs,

11 vs. File No. C1-94-8565

12 Philip Morris Incorporated, R.J.

13 Reynolds Tobacco Company, Brown

14 & Williamson Tobacco Corporation,

15 B.A.T. Industries P.L.C., Lorillard

16 Tobacco Company, The American

17 Tobacco Company, Liggett Group, Inc.,

18 The Council for Tobacco Research-U.S.A.,

19 Inc., and The Tobacco Institute, Inc.,

20 Defendants.

21 - - - - -

22 DEPOSITION OF SAMUEL D. CHILCOTE

23 Volume I, Pages 1 - 266

24

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1 (The following is the deposition of SAMUEL
2 D. CHILCOTE, taken pursuant to Notice of Taking
3 Deposition, at the offices of Robins, Kaplan, Miller
4 & Ciresi, 1801 K Street N.W., Washington, D.C.,
5 commencing at approximately 9:01 o'clock a.m.,
6 September 18, 1997.)

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C O N F I D E N T I A L

4

I N D E X

EXHIBITS	DESCRIPTION	PAGE MARKED
Plfs' Ex 749	Handwritten document dated	
	4/21/78, Bates 01346204-5	35
750	Letter dated February 22,	
	1974, Smith to Sloat, Bates	
	LG0273331-2	46
751	Letter dated December 11,	
	1968, Austern to list, Bates	
	1001880732-3	52
752	"The Tobacco Institute	
	Communications Task Force	
	Preliminary Discussion Paper"	
	dated February 25, 1983, Bates	
	04330468-725	59
753	"Cigarette Industry	
	Advertising Standards," Bates	
	1005105164-5	114
754	"Smoking and Young People -	
	Where the Tobacco Industry	
	Stands," Bates TMN0133916-22	126
755	"SECONDARY SOURCE DIGEST,	
	MARKETING PLANNING APPROACH,"	
	Bates 680096095-110	155

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1	756	Memo dated October 6, 1982,	
2		Burrows to Hall, Bates	
3		501988810-8	168
4	757	Memo dated August 30, 1978,	
5		Achey to Judge, Bates	
6		03537131-2	196
7	758	"...ON YOUNG SMOKING, TOBACCO	
8		INDUSTRY INITIATIVES," Bates	
9		2025862354-5	199
10	759	Memo dated February 4, 1965,	
11		Welch to TI membership, Bates	
12		502052361-6	210
13	760	"1988 MINNESOTA LEGISLATIVE	
14		PLAN, MINNESOTA 1987 LEGISLATIVE	
15		OVERVIEW," Bates TIMN283315-9	222
16	761	Memo dated April 26, 1989,	
17		Nelson to Enrick, Bates	
18		TIMN457974-5	226
19	762	"TEENAGE SMOKING," dated July	
20		30, 1982, Bates	
21		TIMN0237382-402	230
22	763	Letter dated April 27, 1983,	
23		Chilcote to Horrigan, Bates	
24		503907468	235
25			

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1 764 Agenda for TI representatives
2 meeting August 5, 1992, Bates
3 514502202B 238
4 765 Memo dated November 27, 1991,
5 Chilcote to Management Committee
6 members, Bates TIMN0049121-2 240
7 766 "LETTER FOR MINNESOTA," Bates
8 TIMN218446 244
9 767 Letter dated December 11, 1990,
10 Chilcote to Wellstone, Bates
11 TIMN360259 248
12 768 "CAMEL Y&R ORIENTATION," Bates
13 507241613-838 250
14 769 "U.S. CIGARETTE MARKET IN THE
15 1990's" dated June 21, 1990,
16 Bates 507798137-230 257
17 770 Fax cover sheet dated
18 26-Jan-94, Barton to Sandefur,
19 Bates B1546463-9 261
20
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23
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1 P R O C E E D I N G S

2 (Witness sworn.)

3 MR. FLYNN: Before we begin, let me make a
4 record regarding another continuing problem with the
5 designation of exhibits.

6 On September 11, plaintiffs served us a
7 designation consisting of a listing of six things or
8 collections and then a seven-page list of documents.
9 In the six collective descriptions they said any
10 exhibit marked in any TI, B&W, B.A.T., BATCO, Philip
11 Morris, R. J. Reynolds or CTR deposition. We
12 objected and said that's way too voluminous. And if
13 I'm clear, Mr. Moccio on behalf of Robins then told
14 us it would be amended to read any exhibit marked in
15 any TI or CTR deposition, which we then proceeded to
16 accumulate.

17 On September 15th we received another letter
18 from Ms. Wivell of the Robins office amending the
19 exhibit list and adding any deposition exhibit
20 generated in B&W, B.A.T. or BATCO depositions. We
21 advised counsel the next day that that was
22 unacceptable; the volume and quantity of documents
23 encompassed with that was hundreds of documents. We
24 did not have copies of them.

25 We object to the use of those deposition

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1 exhibits at this late hour as both excessive and not
2 in the spirit or letter of the rule allowing
3 designation of supplemental depositions two days in
4 advance of the actual deposition. So we will object
5 to any deposition exhibit not listed or set forth on
6 the September 11th original listing or included as an
7 exhibit to the TI or CTR previously-taken
8 depositions.

9 MS. WIVELL: Well for the record, Mr.
10 Flynn, I would like to note, as I had told you
11 earlier in this week, on September 11th I was in
12 London taking depositions, and at the conclusion of
13 those depositions I was told my mother had had a
14 stroke. My mother was hospitalized. I returned here
15 to the United States. And because I had depositions
16 earlier this week scheduled, we prevailed upon Brown
17 & Williamson to take that deposition off in order
18 that I might be able to deal with my mother's serious
19 illness.

20 In the meantime I was told that you had objected
21 to what I believe to be a proper designation, but
22 when I returned to the office earlier this week I did
23 limit the number of deposition exhibits, cut down the
24 list substantially, and sent you the letter that was,
25 I believe, delivered to your office in Minneapolis

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1 two days before the deposition was due, along with
2 all of the exhibits that I myself personally had put
3 together that are listed on the supplemental list
4 which had not been previously designated. I made the
5 copies myself, put them in the envelope, and sent
6 them off with the messenger.

7 I don't believe it's going to be a problem. If
8 it is, we can deal with the judge. But I believe we
9 have properly designated the exhibits that we're
10 going to be using in this deposition, and I just
11 suggest that we go forward and see if it's a problem,
12 and if it is, that we deal with it when and if it
13 arises.

14 MR. FLYNN: Okay. Just so the record's
15 clear of our position. We're not stopping the
16 deposition, so go ahead. I just wanted the record
17 made. As and when they come up, we'll deal with
18 them. So go ahead.

19 SAMUEL D. CHILCOTE
20 called as a witness, being first duly
21 sworn, was examined and testified as
22 follows:

23 ADVERSE EXAMINATION

24 BY MS. WIVELL:

25 Q. Sir, would you please tell the ladies and

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- 1 gentlemen of the jury your name.
- 2 A. Sam Chilcote.
- 3 Q. Now how do you spell that, sir?
- 4 A. C-h-i-l-c-o-t-e.
- 5 Q. And Mr. Chilcote, by whom are you employed?
- 6 A. Tobacco Institute.
- 7 Q. And how long have you been employed by The
- 8 Tobacco Institute?
- 9 A. Since 1981.
- 10 Q. What is your current position at The Tobacco
- 11 Institute?
- 12 A. President.
- 13 Q. What are your duties as president of The Tobacco
- 14 Institute?
- 15 A. I'm the chief administrative officer.
- 16 Q. Well what do you do as chief administrative
- 17 officer?
- 18 A. Handle the administration of the affairs of The
- 19 Tobacco Institute.
- 20 (Discussion off the stenographic record.)
- 21 Q. Now sir, you understand that The Tobacco
- 22 Institute is a defendant in the lawsuit that's been
- 23 brought by the state of Minnesota and Blue Cross Blue
- 24 Shield.
- 25 A. Yes, ma'am.

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1 Q. And you understand that I represent Minnesota
2 Blue Cross Blue Shield and -- and the state; right?

3 A. Yes, ma'am.

4 Q. Now sir, let's talk a little bit about what The
5 Tobacco Institute is. It's a trade association;
6 isn't it, sir?

7 A. Yes, it is.

8 Q. It's not a publicly open organization that, for
9 example, a person on the street might join; is it?

10 A. That's correct.

11 Q. In other words, it's an organization that is
12 made up of members and that membership is essentially
13 closed; right?

14 A. It's -- it's a membership of people engaged in
15 the manufacture of tobacco.

16 Q. And it includes other defendants in this
17 lawsuit; doesn't it?

18 A. Yes.

19 Q. And Philip Morris is a member?

20 A. Yes.

21 Q. Brown & Williamson is a member?

22 A. Yes.

23 Q. R. J. Reynolds is a member?

24 A. Yes.

25 Q. American Tobacco Company was a member before it

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- 1 was merged with Brown & Williamson; right?
- 2 A. Yes.
- 3 Q. From time to time Lorillard has been a member?
- 4 A. Yes.
- 5 Q. Have I missed any of the major cigarette
- 6 manufacturers in the United States who are currently
- 7 members of The Tobacco Institute?
- 8 A. No, ma'am.
- 9 Q. All right. Now there are other members, but
- 10 they just don't make cigarettes; right?
- 11 A. That's correct.
- 12 Q. Now sir, The Tobacco Institute is funded by its
- 13 members; isn't it?
- 14 A. That's correct.
- 15 Q. In other words, the members contribute the money
- 16 that runs The Tobacco Institute.
- 17 A. Yes.
- 18 Q. There is no sub -- fund -- pardon me.
- 19 There is no publicly funded money in the Tobacco
- 20 Institute; is there?
- 21 A. No, ma'am.
- 22 Q. Now sir, The Tobacco Institute has an Executive
- 23 Committee; doesn't it?
- 24 A. Yes, ma'am.
- 25 Q. Who are the members of the Executive Committee

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1 currently?

2 A. The current members are the representatives from
3 the companies that you just named.

4 Q. In other words, there is one person from Philip
5 Morris --

6 A. There's two, two people from each company.

7 Q. Now sir, has the Executive -- strike that.

8 There has been an Executive Committee of The
9 Tobacco Institute since the Institute was formed;
10 hasn't there?

11 A. Yes, ma'am.

12 Q. The Institute was formed when, sir?

13 A. 1958.

14 Q. Would it be fair to say that since 1958 there
15 has been an Executive Committee which oversees the
16 activities of The Tobacco Institute which has been
17 made up of representatives from the various cigarette
18 manufacturing companies that are members?

19 A. I can only speak since 1981. I -- I wasn't
20 there and would have no reason to go back and see who
21 was on the Executive Committee or what members were
22 for that time.

23 Q. Well you -- I'm sorry.

24 You understood when you joined The Tobacco
25 Institute that there was an Executive Committee;

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1 right?

2 A. That's correct.

3 Q. And at that time it was made up of

4 representatives from the various cigarette

5 manufacturing companies who are members of The

6 Tobacco Institute.

7 A. Yes, ma'am.

8 Q. And in fact, since you joined The Tobacco

9 Institute, there has been an Executive Committee

10 that's had representatives on it from the various

11 tobacco manufacturers.

12 A. Yes, ma'am.

13 Q. That hasn't changed; has it?

14 A. No.

15 Q. Okay. Now there are also other members of

16 the -- I'm sorry, strike that.

17 There are also other committees of The Tobacco

18 Institute; aren't there, sir?

19 A. Yes.

20 Q. All right. One of those committees is the

21 Counsel Committee or Committee of Counsel; right?

22 A. Yes, ma'am.

23 Q. What is that, sir?

24 A. It's representatives from the member companies,

25 one representative from each -- each of the member

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1 companies.

2 Q. Well these aren't just any representatives.

3 These are lawyer representatives; aren't they?

4 A. Yes. There is usually the general counsel for
5 the cigarette division of the company.

6 Q. And when you joined The Tobacco Institute, there
7 was a Committee of Counsel; wasn't there?

8 A. Yes.

9 Q. By the way, how do you refer to it within The
10 Tobacco Institute?

11 A. Committee of Counsel.

12 Q. It's sometimes referred to as Counsel Committee,
13 though; isn't it?

14 A. No. It's always been Committee of Counsel.

15 Q. So if we see references in various Tobacco
16 Institute documents that refer to the Committee of
17 Counsel, they would be referring to this group of
18 general counsel from various cigarette manufacturers
19 who are members of The Tobacco Institute; right?

20 A. Yes, ma'am.

21 Q. Now sir, what is the purpose of the Committee of
22 Counsel?

23 A. To provide legal advice on any matter that we
24 would bring before it or they as member companies
25 would bring before it.

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- 1 Q. Now sir, how often does the Committee of Counsel
2 meet?
- 3 A. Oh, about four times a year, every other month.
4 I'm not sure the exact number.
- 5 Q. When you joined The Tobacco Institute in 1991 --
6 sorry, strike that.
- 7 A. '81.
- 8 Q. When you joined The Tobacco Institute in 1981,
9 there was a Committee of Counsel?
- 10 A. Yes, ma'am.
- 11 Q. You began attending Committee of Counsel
12 meetings; didn't you, sir?
- 13 A. Yes.
- 14 Q. And you have attended Committee of Counsel
15 meetings up to today; haven't you?
- 16 A. Yes. When I can.
- 17 Q. And you regularly try to attend those meetings;
18 don't you?
- 19 A. Yes, ma'am.
- 20 Q. Now sir, you also attend Executive Committee
21 meetings of The Tobacco Institute; don't you?
- 22 A. Yes, ma'am.
- 23 Q. And that committee has met regularly since you
24 joined The Tobacco Institute in 1991 -- '81.
- 25 A. Yes, ma'am.

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1 That's all right.

2 Q. Let me rephrase the question.

3 That committee has met regularly since you
4 joined The Tobacco Institute in 1981; right?

5 A. Yes, ma'am.

6 Q. And you understand that the Executive Committee
7 had met regularly before you joined The Tobacco
8 Institute.

9 A. Yes, ma'am.

10 Q. And you understand that the Committee of Counsel
11 had met regularly before you joined The Tobacco
12 Institute.

13 A. That's what my understanding is.

14 Q. I have to tell you, I have a little bit of
15 hearing problem --

16 A. Yes, ma'am.

17 Q. -- and so could I get you to speak up? You're
18 being quite soft. All right?

19 A. Yes, ma'am.

20 Q. Now sir, you understand that the Committee of
21 Counsel has met regularly since The Tobacco Institute
22 was formed.

23 A. I would assume so. I wouldn't know, you know.

24 Q. You have reason to believe that they met
25 regularly before you joined The Tobacco Institute;

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1 don't you?

2 A. I would assume so.

3 Q. And in fact, minutes are kept of the Counsel
4 of -- I'm -- the Committee of Counsel meetings;
5 aren't they?

6 A. Yes, they have since -- since I've been involved
7 with it. I don't know --

8 Q. Now sir, you understand that in this litigation
9 The Tobacco Institute has been asked by the
10 plaintiffs to turn over documents; right?

11 A. Yes.

12 Q. Now you also understand that with regard to the
13 minutes of the Committee of Counsel meeting, those
14 minutes have not been turned over to us; have they?

15 A. I don't know.

16 Q. Do you understand that a claim of privilege has
17 been made for those documents by The Tobacco
18 Institute?

19 A. No, I've not been informed of that.

20 Q. But just so we're clear, minutes of those
21 meetings are kept regularly; right?

22 A. I don't know. I don't --

23 I don't think there's any minutes, the more I
24 think about it. I think that -- I don't know. I
25 don't think there are any minutes.

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1 Q. Well you --

2 A. I've not seen any minutes.

3 Q. You understand that there are memos that go to
4 the Committee of Counsel for which a claim of
5 privilege has been made; right?

6 MR. FLYNN: I think he's answered that.

7 A. Would you repeat that question, please?

8 Q. Certainly.

9 You understand that there are memos that go to
10 the Committee of Counsel for which -- which haven't
11 been turned over to the plaintiffs because they've
12 been claimed to be privileged.

13 A. No, I don't know about that.

14 Q. Well do you understand that there are memos that
15 come from the Committee of Counsel that have not been
16 turned over to the plaintiffs because of a claim of
17 privilege?

18 A. As I said, I don't know anything about what's
19 transpired in that area.

20 Q. Well sir, you know that there are memos that do
21 go to the Committee of Counsel; right?

22 A. I'm not sure what type memo, what memos you're
23 referring to.

24 Q. Well sir, you've attended the meetings. You've
25 seen memos that had been sent to the committee in

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1 preparation for those meetings; right?

2 A. No, I haven't.

3 Q. Okay. Well you've seen memos that come from the
4 Committee of Counsel after their meetings; haven't
5 you?

6 A. I really can't recall.

7 Q. But you would agree that, generally every other
8 month or four times a year, lawyers representing the
9 various cigarette manufacturers get together and talk
10 about issues that have common interest to their
11 companies when the Committee of Counsel meets;
12 right?

13 MR. FLYNN: You're getting awfully close to
14 privilege, but I'll let him answer. What they talked
15 about substantively is obviously privileged.

16 Go ahead, you can answer that, if you know.

17 A. Just whatever has been on the agenda as it
18 relates to legal matters that the industry should be
19 concerned about.

20 Q. Well sir, more than just legal matters are
21 discussed at the Committee of Counsel meetings; isn't
22 that true?

23 MR. FLYNN: Well now you're getting into
24 privilege and I'm going to instruct him not to
25 answer. Just don't answer the question.

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1 Q. Well let me see if there's some way we can't
2 work this question out because I'm not asking for the
3 substance, but just the subject in general.

4 Sir, isn't it true that there are things other
5 than just legal matters which are discussed at the
6 Committee of Counsel meetings?

7 MR. FLYNN: Well it's the same question,
8 but go ahead, if we can move this along.

9 A. I can't recall anything other than legal
10 matters. My primary -- or The Tobacco Institute in
11 terms of what we're concerned about is legislation,
12 and often that is legal -- legal matters also.

13 Q. Well sir, isn't it true that public relations
14 matters are also discussed at the Committee of
15 Counsel meetings?

16 A. I can't recall of any public relations-type
17 matters, no, ma'am.

18 Q. Well sir, isn't it true that scientific matters
19 are discussed at the Committee of Counsel meetings?

20 A. No, I don't recall scientific matters being
21 discussed.

22 Q. Sir, isn't it true that strategy concerning
23 public statements are discussed at the Committee of
24 Counsel meetings?

25 MR. FLYNN: Again you're right on the

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1 edge. If you can answer this without disclosing the
2 attorney discussions, you can answer it.

3 A. The only strategy that -- that I can recall was,
4 as it relates to legislative strategy, this is what
5 we feel should be done and we'd like to have their
6 input and their interpretation based upon whatever
7 laws are being proposed, or regulation.

8 Q. All right. Well let's turn to the Executive
9 Committee for a second. I'm not sure that I recall
10 if I asked you this, and please forgive me if I have.
11 How many times does the Executive Committee meet a
12 year?

13 A. Four times a year.

14 Q. Does it meet at the same time the Committee of
15 Counsel meets?

16 A. Not always. I think, for just economy, if --
17 you know, Committee of Counsel may have a meeting a
18 day before or a day after at the location.

19 Q. Now sir, are you saying that typically what
20 happens is when you have an Executive Committee
21 meeting, either the day before or after there is also
22 a Committee of Counsel meeting?

23 A. Sometimes.

24 Committee of Counsel, as you can see, would meet
25 more regularly than our Executive Committee.

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1 Q. But you would agree, sir, that when the
2 Executive Committee meets, members of the industry
3 get together to talk about issues that are of common
4 interest to them; right?

5 A. Members of the Executive Committee, they
6 would --

7 That's the purpose of the meetings.

8 Q. Now sir, let's talk about what the purpose of
9 The Tobacco Institute is. Now when you joined the
10 Institute, how did you learn about what it did?

11 A. Well I -- I, like anyone, I guess, before you
12 join an organization, you try and find out as much as
13 you can about the organization, its structure.

14 It was not that big of a leap because most trade
15 associations operate the same way, and I had a trade
16 association background, so I was pretty familiar with
17 the way in which the Cigarette Manufacturers
18 Association also worked.

19 Q. You say you had a trade association background.
20 What do you mean, sir?

21 A. I used to be president of another trade
22 association.

23 Q. Which association was that?

24 A. The Distilled Spirits Council of the United
25 States.

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1 Q. By "distilled spirits," do you mean liquor
2 industry?

3 A. Yes, ma'am.

4 Q. And how long did you hold that position?

5 A. I -- I was with the -- the liquor industry in
6 various capacities for 15 years.

7 Q. And you've been continuously employed by the
8 tobacco industry since 1981; right?

9 MR. FLYNN: Institute, The Tobacco
10 Institute.

11 A. Tobacco Institute. Yes, my wife's very happy
12 that I've been continually employed.

13 Q. Well sir, just so we're clear here, The Tobacco
14 Institute is funded by the tobacco industry; isn't
15 it?

16 A. Yes, The Tobacco Institute is funded by the
17 tobacco industry.

18 Q. So in a way you have been continuously employed
19 by the tobacco industry since 1981; right?

20 MR. FLYNN: I object to that, it's
21 argumentative.

22 A. Yes, I have been continuously employed.

23 Q. And basically your salary has been paid from
24 money that's been contributed by cigarette
25 manufacturers throughout the United States; right?

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- 1 A. Yes, ma'am.
- 2 Q. Now you don't have any medical training.
- 3 A. None whatsoever.
- 4 Q. And do you have a Ph.D.?
- 5 A. No.
- 6 Q. Are you trained as a scientist?
- 7 A. No.
- 8 Q. What's your training and background, sir,
- 9 briefly?
- 10 A. I'm just a hick from the sticks from Wyoming.
- 11 Q. Well, what kind of educational background did
- 12 you get?
- 13 A. I've got a B.A. degree in business.
- 14 Q. Now we were talking about how you learned about
- 15 The Tobacco Institute before you went to work for
- 16 them.
- 17 Have you told us everything you did to try
- 18 and -- and learn about it?
- 19 A. Yes. That's, I think, everything.
- 20 Q. All right.
- 21 A. I knew it had a fine reputation and was
- 22 interesting.
- 23 Q. What was interesting about it?
- 24 A. Well I was like any, I guess, young executive,
- 25 you like to run different things or be involved in

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1 different industries, and I saw it as an opportunity
2 rather than spending the next 20, 30 years with the
3 same group that I had represented before, the
4 alcoholic beverage industry.

5 Q. So you went to work for The Tobacco Institute in
6 1981. How did you learn about -- strike that.

7 You went to work for The Tobacco Institute in
8 1981. Did you do anything when you became employed
9 by The Tobacco Institute to learn about what it did?

10 A. You mean before or --

11 Q. After.

12 A. Oh, after?

13 Q. Yeah.

14 A. Well obviously you try to get up to speed on
15 their issues, learn their organization, find out
16 where the bathroom is.

17 Q. Sir, did you learn when you became -- by the
18 way -- strike that.

19 What position did you have when you started with
20 The Tobacco Institute?

21 A. I was president.

22 Q. So you started as president and you've stayed
23 president all these years; right?

24 A. Yes, ma'am.

25 MS. WIVELL: Excuse me. Can we go off the

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1 record.

2 THE REPORTER: Off the record, please.

3 (Discussion off the record.)

4 BY MS. WIVELL:

5 Q. Sir, when you were learning about The Tobacco
6 Institute, did you understand that it was or acted as
7 the voice of the tobacco industry?

8 A. Well I understood that was one of the roles with
9 the industry on any matter that I wanted to have --
10 make a statement. Obviously they would -- like any
11 other trade association, also the companies would
12 make their own statements.

13 Q. And sir, since 1981 when you joined The Tobacco
14 Institute, the Institute has continued to be one of
15 the voices for the tobacco industry; hasn't it?

16 A. Yes, one of the voices.

17 Q. The companies have their own voice, too, though;
18 don't they?

19 A. Yes, ma'am.

20 Q. But you would agree that up to and including
21 today, when The Tobacco Institute speaks, it speaks
22 on behalf of the tobacco industry; doesn't it?

23 A. Oh, just on --

24 There's many facets of the tobacco industry. We
25 only speak for the cigarette manufacturers.

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1 Q. All right. Well with that caveat in mind, let
2 me ask the question this way: You would agree that
3 up to and including today, when The Tobacco Institute
4 speaks, it speaks on behalf of the cigarette
5 manufacturers; doesn't it?

6 A. Yes, ma'am.

7 Q. Now sir, when you were getting up to speed and
8 learning about the industry's issues, did you learn
9 that for, by that time, 30 years, the industry had
10 employed a strategy to defend itself in litigation,
11 politics, and in the public opinion arena?

12 A. No.

13 MS. WIVELL: One moment, please.

14 THE REPORTER: Let's go off the record a
15 moment, please.

16 (Discussion off the record.)

17 BY MS. WIVELL:

18 Q. Sir, showing you what's previously been marked
19 as Plaintiffs' Exhibit 405, this is a memo that was
20 written from -- by Fred Panzer to Horace Kornegay
21 dated May 1st, 1972; right?

22 A. Yes, it would appear so. Yeah.

23 Q. Now sir, for the record, this document begins
24 with the Bates number 87657703; right?

25 A. I'm sorry, I don't see that.

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1 MR. FLYNN: Down here.

2 THE WITNESS: Oh, down here?

3 A. Yes, ma'am.

4 Q. Now sir, at the time this memo was written, Fred
5 Panzer was a vice-president of The Tobacco Institute;
6 wasn't he?

7 A. I -- I think so. I don't know what his job was
8 at that time.

9 Q. Now at the time the memo was written, what was
10 Horace Kornegay's position?

11 A. He was president.

12 Q. Of The Tobacco Institute?

13 A. Yes, ma'am.

14 Q. In fact he was your predecessor at The Tobacco
15 Institute; wasn't he?

16 A. That's correct.

17 Q. Now if you take a look at this document, it says
18 in the second paragraph, "For nearly twenty years,
19 this industry has employed a single strategy to
20 defend itself on three major fronts -- litigation,
21 politics, and public opinion." Did I read that
22 correctly?

23 A. Yes.

24 Q. Now sir, did you learn when you joined The
25 Tobacco Institute that the industry had employed a

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1 single strategy to defend itself on those three
2 fronts, litigation, politics, and public opinion?

3 A. No, ma'am.

4 Q. Well sir, isn't it true that even today the
5 industry employs a single strategy to defend itself
6 on these three fronts, litigation, politics, and
7 public opinion?

8 A. No. I don't -- I don't know what a single
9 strategy would -- would be, so I -- I -- I -- I guess
10 I'd disagree with that.

11 Q. Well sir, if The Tobacco Institute speaks for
12 the tobacco industry, it's part of the strategy to
13 speak for the industry with one voice; isn't it?

14 A. Well we would hope that we would have one voice
15 on any matters relating to The Tobacco Institute.

16 Q. And sir, on the matters that The Tobacco
17 Institute speaks for the cigarette industry, one of
18 the purposes of having The Tobacco Institute is so
19 that the industry will speak with one voice.

20 A. That's correct.

21 Q. Sir, showing you what's previously been marked
22 as Plaintiffs' Exhibit 466, this is a document
23 entitled "REPORT ON POLICY ASPECTS OF THE SMOKING AND
24 HEALTH SITUATION IN THE U.S.A.," and it's dated
25 October 1964; right?

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1 A. Yes, ma'am.

2 Q. For the record, the Bates number is 1003119099
3 as its first number; right?

4 A. Yes, ma'am.

5 Q. Would you turn to the portion of the document on
6 page 31 that refers to The Tobacco Institute.

7 Sir, have you read this portion of this document
8 before?

9 A. No, ma'am.

10 Q. Why don't you take a moment and read it.

11 You've now -- you've now read it?

12 A. Yes, I have.

13 Q. At the --

14 In the beginning of the first paragraph of page
15 31 there is the statement, "There is a need for a
16 voice to speak on behalf of the industry on all
17 matters - not merely those of health -- and T.I. is
18 that voice, but its activities are minimal." Do you
19 see that, sir?

20 A. Yes.

21 Q. You would agree that the cigarette industry
22 feels there is a need for a voice to speak on behalf
23 of that industry and that the tobacco industry is
24 that voice; right?

25 A. Would you ask the question again?

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1 Q. Certainly.

2 You would agree that the cigarette industry
3 feels there is a need for a voice to speak on its
4 behalf, and that the tobacco industry is that voice.

5 A. I think the -- the industry sees a need if --
6 for -- to give the industry's perspective on -- on
7 matters.

8 Q. And it does so through the tobacco industry --
9 or the tobacco -- strike that.

10 It does so through The Tobacco Institute;
11 doesn't it?

12 A. Tobacco Institute, or they have their own --

13 The Tobacco Institute, or if they have their own
14 views, why obviously they -- they give their own
15 views.

16 Q. Well keeping in mind that the companies often
17 speak on their own behalf, too, you would agree
18 essentially with the statement made in the first
19 sentence on page 31 of Exhibit 466; right?

20 MR. FLYNN: Read it again. Just have it --

21 I object. It's just inconsistent with what
22 you've been asking him. But go ahead, answer it if
23 you can.

24 A. I need --

25 Are you saying that I agree with this entire

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1 first paragraph?

2 Q. No, no. I'm reflecting just on the first
3 sentence, sir.

4 Keeping in mind that the cigarette companies can
5 also speak individually, you would agree essentially
6 with the first sentence of this first paragraph;
7 right?

8 A. I guess -- I guess so. I don't know the context
9 of this.

10 Q. Now the next sentence says, "The impression that
11 we obtained is that T.I. is largely a voice at the
12 end of a telephone line from the lawyers, and speaks
13 only when and as directed."

14 Now sir, before we go on and talk about that
15 sentence, TI is what you sometimes refer to The
16 Tobacco Institute in shorthand; isn't it?

17 A. It is The Tobacco Institute.

18 Q. In other words, if you and I were to talk about
19 TI, you'd know that -- or you'd agree we're talking
20 about The Tobacco Institute; right?

21 A. Yes, ma'am.

22 Q. And in fact within The Tobacco Institute it is
23 sometimes, in a shorthand way, referred to as TI;
24 isn't it?

25 A. Yes.

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1 Q. Can we agree that in this deposition if we use
2 the word -- or the -- the shorthand phrase "TI," that
3 we're really talking about The Tobacco Institute?

4 A. Yes, ma'am.

5 Q. Okay. Now sir, going back to the sentence that
6 says, "The impression that we obtained is that T.I.
7 is largely a voice at the end of a telephone line
8 from lawyers, and speaks only when and as directed,"
9 now isn't it true that TI is largely directed by the
10 Committee of Counsel?

11 A. No, ma'am.

12 Q. So you take exception to that; don't you?

13 A. Yes.

14 Q. Well sir, you'd agree that the Committee of
15 Counsel meets more often than the Executive Committee
16 of The Tobacco Institute; right?

17 A. Yes.

18 Q. And sir, isn't it a fact that the -- the
19 Committee of Counsel has for years run The Tobacco --
20 the activities of The Tobacco Institute?

21 MR. FLYNN: Objection.

22 A. No, I -- I wouldn't agree with that. As I -- as
23 I said, I answer to the Executive Committee.

24 Q. Well sir, you may answer to the Executive
25 Committee, but isn't it true that essentially The

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1 Tobacco Institute is run by the Committee of
2 Counsel --

3 MR. FLYNN: Just --

4 Q. -- and the Executive Committee answers to it?

5 MR. FLYNN: You're repetitive. He just
6 answered that question. You're just arguing with
7 him.

8 Answer it once more and then we'll move on.

9 A. What was the question again?

10 Q. Isn't it true that essentially The Tobacco
11 Institute is run by the Committee of Counsel and that
12 the Executive Committee answers to it?

13 A. No. As I -- as I said, I'm answerable to the
14 Executive Committee.

15 Q. And sir, isn't the Executive Committee
16 answerable to the Committee of Counsel?

17 A. No. I don't --

18 Q. Well sir, isn't it true that since the early
19 '60s that the Committee of Counsel has run the
20 public policy activities of The Tobacco Institute?

21 A. Well Ms. Wivell, as I -- I said, I joined in
22 '81. I don't know about anything in the past.

23 (Plaintiffs' Exhibit 749 was marked
24 for identification.)

25 BY MS. WIVELL:

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1 Q. Sir, showing you what's been marked as
2 Plaintiffs' Exhibit 749, this is a document that
3 bears the Bates number on the first page 01346204;
4 right?

5 A. Yes, ma'am.

6 Q. And it refers to "Scientific Research Liaison
7 Committee," and is dated 4-21-78; right?

8 A. Yes, ma'am.

9 MR. FLYNN: Appears to be a Lorillard
10 document.

11 Q. Sir, have you ever seen this document before?

12 A. No, ma'am.

13 Q. Would you take a moment and please read it.

14 A. Yes, ma'am.

15 Q. You've had the opportunity to read Exhibit 749?

16 A. Yes.

17 Q. Now sir, this document concerns the reconvening
18 of a Scientific Research Liaison Committee; right?

19 MR. FLYNN: Objection, it speaks for
20 itself. If you want to read him something, you can
21 read it to him. It concerns a bunch of stuff.

22 A. I see the heading "Scientific Research Liaison
23 Committee."

24 Q. And it says we "Should re-convene because," and
25 then there's a colon and several reasons are listed;

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1 right?

2 A. Yes, ma'am.

3 Q. The first reason is, "We have again 'abdicated'

4 the scientific research directional management" --

5 A. That --

6 Q. I'm sorry.

7 A. I don't know if that's "directional" or not.

8 Q. Well let me begin again.

9 A. Yeah.

10 Q. It says, "We have again 'abdicated' the

11 scientific research directional management of the

12 Industry to the 'Lawyers' with virtually no

13 involvement on the part of scientific or business

14 management side of the business;" right?

15 A. That's what the document says.

16 Q. Now sir, it goes on to talk about the Committee

17 of Counsel; doesn't it?

18 MR. FLYNN: Again I object to the

19 paraphrasing. That word is in the next paragraph.

20 A. It talks about the --

21 Yes, it refers to the Committee of Counsel, and

22 then there's other -- other things listed in that

23 paragraph.

24 Q. It says, "Lorillard's management is opposed to

25 the total Industry future being in the hands of the

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1 Committee of Counsel -- it's reminiscent of -- of
2 late 1960's when Ramm's group ran the TI, CTR and
3 everything else involved with the Industry's public
4 posture." Right?

5 A. That's what the document says.

6 Q. Now sir, just so we're clear here, Ramm is the
7 name of one of the people who was a member of the
8 Committee of Counsel back in the '50s and '60s;
9 right?

10 A. I don't know.

11 Q. You have no knowledge of --

12 A. I've never heard that name before.

13 Q. Sir, in the tobacco industry, is there more than
14 one Committee of Counsel?

15 A. No.

16 Q. Now you would expect or --

17 Based on your experience with The Tobacco
18 Institute, you understand that that is a reference to
19 the Committee of Counsel that we were talking about
20 in this deposition; don't you?

21 A. Yes.

22 Q. And sir, isn't it -- strike that.

23 Because this predates you, you have no
24 information to the contrary to refute what's said in
25 this paragraph; do you?

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1 MR. FLYNN: That's argumentative. He has
2 no information either way, I'm sure.

3 A. Well I -- I really don't have --

4 I don't know anything about this, frankly.
5 Never seen it before.

6 Q. Did anyone ever share the contents of this
7 document with you before this deposition today?

8 A. No, ma'am.

9 Q. Now sir, Lorillard withdrew from The Tobacco
10 Institute; didn't it?

11 A. Not since I have been president. I don't
12 know --

13 Q. Have they been a member continuously --

14 A. Since '81, yes.

15 Q. And sir, when it says here that -- makes
16 reference to "Ramm's group running TI, CTR and
17 everything else involved with the Industry's public
18 posture," this is a statement that's news to you; is
19 that what you're telling us?

20 A. Yes, ma'am.

21 Q. Now if you turn to the last page of the
22 document, it says in the second-to-the-last
23 paragraph, "The committee will Not," underlined,
24 "report to the Committee of Counsel but to own
25 company's CEO's;" right?

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1 A. That's what the document says.

2 Q. Sir, was the Committee -- or the Scientific
3 Research Liaison Committee reconstituted? Was it
4 reconvened as this memo suggests that Lorillard's
5 management thinks it should be?

6 A. I'm sorry I can't be more helpful, but I've
7 never heard of the Scientific Research Liaison
8 Committee, so I don't know.

9 Q. Well sir, are there committees within The
10 Tobacco Institute that report -- I'm sorry, strike
11 that.

12 Are there committees within the tobacco industry
13 that report to the Committee of Counsel?

14 A. Well we have very limited committees. There's
15 no other committees that would --

16 No, there's no committees that report to the
17 Committee of Counsel.

18 Q. Well in your last answer you were thinking about
19 within The Tobacco Institute; weren't you?

20 A. Yes.

21 Q. All right. Well my question was a little
22 broader than that. Within the tobacco industry are
23 there committees that report to the Committee of
24 Counsel?

25 A. Not to my knowledge, no. I don't think so.

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1 Q. Now the Committee of Counsel approves funding
2 for lawyers' special projects; doesn't it?

3 A. The Committee of Counsel, to my knowledge, be it
4 any special legislation or -- or legal matters/
5 legislation --

6 We hire attorneys in some states for advice on
7 regulation or laws. Is that the sense of your
8 question?

9 Q. Well sir, no, it's not as a matter of fact.

10 Let me ask it this way: Are you familiar with
11 the term "lawyers' special projects?"

12 A. No, ma'am.

13 Q. You've never heard of that before.

14 A. No.

15 Q. You've never heard of a fund that was set up
16 specially that was a secret fund to pay scientists in
17 order to develop research to defend the industry in
18 tobacco lawsuits?

19 MR. FLYNN: Object to the argumentative
20 description of it. But if you --

21 A. No, I -- I have no knowledge of that.

22 Q. None at all.

23 A. No, ma'am.

24 Q. Have you ever heard of Special Fund 4?

25 A. I've heard special fund for, let's say, a lot of

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1 different things. You know, got a special fund for
2 the coffee fund, or a special fund for -- for -- you
3 know, that's a term that's used for, you know, a lot
4 of activities I guess.

5 Q. Well sir, you've heard of Special Fund --

6 A. Any fund --

7 MR. FLYNN: You mean f-o-u-r as opposed to
8 f-o-r?

9 MS. WIVELL: F-o-u-r.

10 Q. Sir, you've heard Congressman Waxman talk about
11 Special Fund 4; haven't you?

12 A. No, I haven't.

13 F-o-u-r?

14 Q. F-o-u-r.

15 A. No, I haven't.

16 Q. That's just a term that you're completely
17 unfamiliar with.

18 A. I thought it was f-o-r, excuse me, not f-o-u-r.

19 I've never heard of f-o-u-r.

20 Q. Sir, your testimony today is that you've never
21 heard of the lawyers' special project; is that right?

22 A. That's correct.

23 Q. You've never heard of Special Fund 4.

24 A. No.

25 Four, f-o-u-r.

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1 Q. Yes.

2 A. Right.

3 Q. You've never heard of that.

4 A. No, ma'am.

5 Q. Have you ever heard of CTR special projects?

6 A. I've heard of CTR special projects.

7 Q. And sir, did you understand that CTR special
8 projects was a secret, special part of CTR devoted to
9 funding research that could be used by the tobacco
10 industry to defend itself in lawsuits?

11 MR. FLYNN: Objection, it's multiple
12 questions. You have about six adjectives in there.
13 If you break them out, there's no problem.

14 A. Would you repeat the question? There was a lot
15 of -- lot of different questions I thought.

16 Q. Sir, did you understand that CTR special
17 projects was a secret part of CTR devoted to funding
18 research that would be used by the tobacco industry
19 to defend itself in lawsuits?

20 MR. FLYNN: Same objection. The problem is
21 the word "secret." If you take it out of there --

22 Then you can ask him a separate question if you
23 want, if it is secret.

24 A. I've heard of CTR special projects, but
25 that's -- that's just --

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1 I don't know anything about it. Just heard that
2 there are special projects for research.

3 Q. Did you understand that these were, up until a
4 few years ago, secret projects?

5 A. No, I didn't -- never heard the word "secret."
6 I've never -- I'm not familiar with that.

7 Q. How about "confidential," did you hear
8 "confidential" used with regard to lawyer -- or CTR
9 special projects?

10 A. No. I'm not that -- that aware of CTR, frankly.

11 Q. When I'm asking you these questions -- strike
12 that.

13 Sir, did you understand that CTR special
14 projects were funded in order so that The Tobacco
15 Institute would be able to have research to defend
16 itself in lawsuits?

17 A. No, ma'am. I thought the CTR was funded for the
18 purposes of tobacco research. It wasn't funded for
19 purposes of The Tobacco Institute.

20 Q. So if there was a lawyers' special project
21 within CTR that was aimed at funding law -- or
22 funding research devoted to defending The Tobacco
23 Institute, that would be a surprise to you?

24 A. Yes, ma'am.

25 Q. Do you know, going back to Exhibit 749, why the

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1 author said, "We have again, quote, 'abdicated' the
2 scientific research directional management of the
3 Industry to the 'Lawyers' with virtually no
4 involvement on the part of the scientific or business
5 management side of the business?"

6 A. I really don't know what it -- what it means.

7 MR. FLYNN: She just wanted to read it into
8 the record again.

9 Q. Now sir, do you understand that The Tobacco
10 Institute set up an ad hoc committee to review the
11 industry's support of medical research?

12 A. I don't recall that, no, ma'am.

13 Q. Well when you were getting up to speed when you
14 became president of The Tobacco Institute, did you go
15 back through and review your predecessor's files?

16 A. No, ma'am.

17 Q. Did you talk to your predecessor, Mr. Kornegay,
18 when you became president of The Tobacco Institute?

19 A. Yes, ma'am. He was still there. He was made
20 chairman when I came in.

21 Q. So he was available as a resource for you to go
22 back and ask questions to; right?

23 A. Yes.

24 Q. All right. Have you ever heard of the ad hoc
25 committee?

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1 A. Of the ad hoc --

2 We have ad hoc committees. I have one right
3 now, an ad hoc committee in a particular state, you
4 know, so you're looking into legislation. I've heard
5 of that word, "ad hoc" and an "ad hoc committee."
6 I've participated in a lot of ad hoc committees --

7 Q. Okay. Did --

8 A. -- in and outside the industry.

9 Q. I'm sorry, I thought you were done.

10 Well did you learn about an ad hoc committee
11 that was established to review the industry's support
12 of medical research?

13 A. No.

14 (Plaintiffs' Exhibit 750 was marked
15 for identification.)

16 BY MS. WIVELL:

17 Q. Sir, showing you what's been marked as
18 Plaintiffs' Exhibit 750, this is a document that
19 begins with the Bates number 0273331; right?

20 A. Yes, ma'am.

21 Q. This is a memo from William S. Smith to Arthur
22 E. Sloat of Liggett & Myers; right?

23 MR. FLYNN: Or a letter I'd say, but
24 whatever.

25 Q. Well let me rephrase the question.

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1 MR. FLYNN: To Liggett & Myers.

2 Q. Exhibit 750 is a letter from William Smith of
3 RJR to Arthur Sloat of Liggett & Myers; right?

4 A. Yes.

5 Q. Would you take a moment and review it.

6 MR. FLYNN: While he's doing that, let the
7 record reflect this is dated February 22, '74.

8 A. Yes, ma'am.

9 Q. You've now had the opportunity to read Exhibit
10 750; right?

11 A. Yes, ma'am.

12 Q. Now at the time this document was written, R. J.
13 Reynolds was a member of The Tobacco Institute.

14 A. I don't know, but I would imagine they were.

15 Q. And at the time this was written, Liggett &
16 Myers was a member of The Tobacco Institute; wasn't
17 it?

18 A. I don't -- I do not --

19 I imagine they were, but I do not know.

20 Q. Now it refers in the first sentence to a
21 consensus that a committee be established to review
22 the industry's support of medical research; doesn't
23 it?

24 MR. FLYNN: Again it speaks for itself.

25 A. Yeah, that's what it says, the first part of

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1 that.

2 Q. All right. And it also speaks to the fact that
3 this committee would make recommendations as to the
4 future course our support should take; right?

5 A. That's what it says.

6 Q. Now sir, it also refers to an Executive
7 Committee, and you understand that that refers to the
8 Executive Committee meeting of The Tobacco Institute;
9 right?

10 MR. FLYNN: Take the time to read the
11 sentence if you want.

12 A. It says the Executive Committee. I -- I have to
13 assume that that would be a -- I don't --

14 I don't know.

15 Q. Well you would assume it's the Executive
16 Committee of The Tobacco Institute because you know
17 of no other Executive Committee that's existed within
18 the industry; right?

19 A. Well they all have their own executive
20 committees within their own companies, but --

21 Q. Sir, was the committee that is referred to here
22 in the first paragraph established to review the
23 industry's support of medical research?

24 MR. FLYNN: Objection, there's no
25 foundation.

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- 1 A. What was the question?
- 2 Q. Was the committee that is referred to here in
- 3 the first paragraph of Exhibit 750 established?
- 4 A. You mean was the Executive Committee
- 5 established?
- 6 Q. I'm sorry. Let me be more clear.
- 7 Was the committee that's referred to in the
- 8 first sentence established to review the industry's
- 9 support of medical research?
- 10 A. I don't know. I -- I have no way of knowing. I
- 11 don't know.
- 12 Q. Would you turn to the last page of Exhibit 750,
- 13 please.
- 14 A. Last page.
- 15 Q. On that page it makes reference to the
- 16 committee's composition; doesn't it?
- 17 A. Yes.
- 18 Q. Talks about two members of the Executive
- 19 Committee, two members of the Committee of Counsel;
- 20 right?
- 21 A. Yes.
- 22 Q. Now the Committee of Counsel is, again,
- 23 reference to The Tobacco Institute's Committee of
- 24 Counsel; isn't it?
- 25 A. I would think so.

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1 Q. And you would think that because, to your
2 knowledge, there's never been another Committee of
3 Counsel within any of the industry organizations;
4 right?

5 A. Not to my knowledge, no.

6 Q. Now sir, it mentions two scientific directors.
7 Each company within the Institute that manufactures
8 cigarettes has a scientific director; doesn't it?

9 A. I do not know. I don't know.

10 Q. Another person who was recommended to be on the
11 committee was Horace Kornegay; right?

12 A. Yes, ma'am.

13 Q. That's your successor; right?

14 A. Yes, ma'am.

15 Q. Another person was Dave Hardy; right?

16 MR. FLYNN: You are selectively reading
17 them. Okay.

18 A. You mean Dr. Gardner -- oh, I see, Dave --
19 There's Dr. Gardner and Dave Hardy, yes.

20 Q. All right. Now who is Dave Hardy, or who was
21 Dave Hardy?

22 A. I think he was with the law firm -- I don't
23 know. I've --

24 I would assume he's with the law firm of Shook
25 Hardy.

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- 1 Q. And Bacon in --
- 2 A. And Bacon, yes.
- 3 Q. And they're from Kansas City?
- 4 A. Kansas, yes.
- 5 Q. And they represent whom, sir?
- 6 A. They -- I --
- 7 I think they represent some member companies.
- 8 Q. Of The Tobacco Institute; right?
- 9 A. Of The Tobacco Institute. I don't know who all
- 10 they represent, frankly.
- 11 Q. Do you know who the Dr. Gardner is who's listed
- 12 there?
- 13 A. No, I don't.
- 14 Q. Now another person who's listed as being a
- 15 member of this committee is Bill Kloepfer; right?
- 16 A. Yes, Bill Kloepfer.
- 17 Q. Am I pronouncing his name right?
- 18 A. Yes, ma'am.
- 19 Q. He was vice-president for public relations of
- 20 The Tobacco Institute; wasn't he?
- 21 A. That's correct.
- 22 Q. Another person who's listed is Leonard Zahn.
- 23 A. Yes.
- 24 Q. Now who is Leonard Zahn?
- 25 A. I don't know.

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1 Q. Now sir, and --

2 Is it your testimony, then, that you don't know
3 whether the committee that's referred to was ever set
4 up or operated?

5 A. This committee?

6 Q. Yes, sir.

7 A. No, I do not know.

8 Q. Now sir, isn't it true that at the various
9 Committee of Counsel meetings, from time to time
10 scientists from the companies would come to the
11 meetings and make presentations?

12 A. I can't recall scientists coming to the
13 meetings, no, ma'am.

14 (Plaintiffs' Exhibit 751 was marked
15 for identification.)

16 BY MS. WIVELL:

17 Q. Sir, showing you what's been marked as
18 Plaintiffs' Exhibit 751, this is a letter to Messrs.
19 Grant, Ramm, Smith and Yeaman regarding a survey of
20 smoking habits written by H. T. Autern; right? Or is
21 it Austern?

22 A. Austern.

23 Q. For the record, it begins with Bates number
24 1001880732; right?

25 MR. FLYNN: Dated December 11th, '68.

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1 A. No. I have 733.

2 MR. FLYNN: That's the second page.

3 THE WITNESS: Oh, that's the second page.

4 Okay.

5 Q. Let's turn back to the first page.

6 A. Okay. Sorry.

7 Q. For the record, --

8 A. Yes.

9 Q. -- the first page of Exhibit 751 is Bates
10 numbered 1001880732; right?

11 A. Yes.

12 Q. Now this letter predates your involvement with
13 the Tobacco Institute; doesn't it?

14 A. Yes, ma'am.

15 Q. Have you ever seen this letter before, sir?

16 A. No, ma'am.

17 Q. Would you take a moment and read it, please.

18 A. Yes, ma'am.

19 Q. Now sir, you've read Exhibit 751?

20 A. Yes.

21 Q. It refers to a Committee of Counsel meeting;
22 doesn't it?

23 MR. FLYNN: I object, it speaks for
24 itself. Read to the witness what you're talking
25 about.

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1 I don't see it in there. If you see the phrase
2 in there, you can tell her where you see it; but if
3 you don't, tell her that.

4 A. No, I --

5 Well that's right, I -- I -- I don't see
6 "Committee of Counsel," no.

7 Q. Well let's back up a second.

8 Mr. Austern was a partner at Covington &
9 Burling; right?

10 A. Yes.

11 Q. Covington & Burling represented The Tobacco
12 Institute in 1968; right?

13 A. I -- I believe so. I don't know.

14 Q. All right. Well Covington & Burling represents
15 The Tobacco Institute today; doesn't it?

16 A. Today, that's correct.

17 Q. I have to warn you, sir, we're going to have to
18 make sure that we don't speak over one another.

19 A. Okay. I apologize. I apologize to you.

20 Q. I'll try real hard to wait for you to be done if
21 you try real hard for me to wait to be done too.

22 Covington & Burling represents The Tobacco
23 Institute today; doesn't it?

24 A. Yes, ma'am.

25 Q. As a matter of fact, there is a partner here

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1 from Covington & Burling helping defend you in this
2 deposition; isn't that true?

3 A. That's correct.

4 Q. And in fact that is the very same law firm that
5 this letter came from back in 1968; right?

6 A. Yes, ma'am.

7 Q. Now it refers or --

8 The letter was sent to Messrs. Grant, Ramm,
9 Smith and Yeaman.

10 A. Yes.

11 Q. They were all members of the Committee of
12 Counsel in 1968; weren't they?

13 A. I don't know. I don't recognize those names.

14 Q. Well you under -- understand that Addison Yeaman
15 was general counsel of Brown & Williamson?

16 A. I do not know. I -- I've never heard of that
17 name. I -- I don't know if he was or was not.

18 Q. All right. You just don't know as you sit here
19 today whether or not the people who are listed in
20 this letter refer to -- are or -- are the members
21 of --

22 A. No, ma'am. I've never met any of these people
23 or heard their names before, frankly.

24 Q. Now sir, it suggests that a meeting was going to
25 be held on January 27th at The Tobacco Institute;

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1 right?

2 A. That's what the letter says.

3 Q. And one of the reasons for the meeting was that
4 Dr. Dunn of Philip Morris was going to present
5 information on smoking habits; right?

6 MR. FLYNN: It speaks for itself. It says
7 "may present the results of the study." Again, I
8 object to your paraphrasing of the document. The
9 witness has never seen it, knows nothing about it.
10 It speaks for itself.

11 Read the part about the meeting.

12 THE WITNESS: Let's see, it says --
13 where --

14 Where is that?

15 A. It says, "Dr. Dunn of Philip Morris Research
16 Center has reported that the survey of smoking is
17 proceeding fully on schedule."

18 Q. "...smoking habits is proceeding fully on
19 schedule;" right?

20 A. Therefore, suggested a meeting 10:00 o'clock,
21 January 27th at The Tobacco Institute in order that
22 Dr. Dunn and his staff may present the results of the
23 study, yes.

24 Q. I'm not sure it's real clear there, sir. Let me
25 try again.

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1 One of the purposes of this meeting was so that
2 Dr. Dunn could present the results of a study he had
3 done on smoking habits; right?

4 A. Ms. Wivell, I -- I don't know what -- other than
5 what's here. I've seen this for the first time. I
6 wasn't there at the time. It says what it says, so I
7 don't know what else I can add.

8 Q. I understand. I'm just --

9 Because you and I had a couple of interchanges
10 where I asked a question and I don't think it was
11 answered, I'm just going to go back and try and ask
12 it again so the record will be clear.

13 A. Yes, ma'am.

14 Q. One of the purposes of the meeting that was
15 scheduled for January 27th at The Tobacco Institute
16 was that Dr. Dunn was going to be able to present the
17 results of his study.

18 A. That's what the letter says.

19 Q. All right. Now sir, there have been while you
20 were at The Tobacco Institute meetings like this one
21 that's referred to in Exhibit 751 where scientists
22 from one company would come in and present
23 information to other cigarette manufacturer members
24 of The Tobacco Institute; haven't there?

25 MR. FLYNN: I object to the question as

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1 asking the witness to assume a whole set of facts
2 that he's said he can't. Forget the meetings like
3 this one. You want to ask him a question --

4 He had no idea if this meeting ever took place,
5 much less what it was, quote, like. As phrased, it's
6 just -- the witness can't answer it.

7 MS. WIVELL: Let me try and rephrase the
8 question.

9 MR. FLYNN: Fine.

10 MS. WIVELL: And maybe I can make it
11 better.

12 Q. While you have been at The Tobacco Institute,
13 there have been meetings where scientists from one
14 company would come in and present information to the
15 other cigarette manufacturer members of The Tobacco
16 Institute; isn't that true?

17 A. I cannot recall any meetings like that, no.

18 Q. So there may have been, but you just can't
19 recall?

20 A. I cannot recall any meetings, no, I can't.

21 Q. And do you have any information that suggests
22 that the -- that the meeting that's referred to in
23 Exhibit 751 did not take place?

24 A. I never heard of the meeting, and I have -- I --
25 I just don't know.

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1 No. I don't know.

2 Q. You -- you just don't know one way or the other;
3 do you?

4 A. One way or the other, no, ma'am.

5 MS. WIVELL: All right. Why don't we take
6 a brief break.

7 MR. FLYNN: Okay.

8 THE REPORTER: Off the record, please.

9 (Recess taken.)

10 (Plaintiffs' Exhibit 752 was marked
11 for identification.)

12 BY MS. WIVELL:

13 Q. Sir, while we were off the record, the court
14 reporter marked Plaintiffs' Exhibit 752. This is a
15 document that bears the Bates number 04330468; right?

16 A. Yes, ma'am.

17 Q. And it's a document that you're familiar with;
18 isn't it?

19 MR. FLYNN: For the record, it's also
20 through 072 -- 0726. It's a hundred-and-some-page
21 document.

22 A. I can't recall this document, no.

23 Q. All right. Would you take a few minutes and --
24 or just a few moments and flip through it. I'm not
25 asking you to read every page, but ask if looking at

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1 it refreshes your recollection that you participated
2 in preparing parts of this document.

3 A. I know I didn't participate in preparing parts
4 of the document. I don't see where it just -- this
5 is --

6 Is this part of the document? Okay. All
7 right.

8 Is there anything you particularly want me to
9 look at?

10 Q. Well sir, there are letters contained in this
11 document that you've written; right?

12 A. I don't know. Where are they? Can you --
13 I don't see --

14 MR. FLYNN: She'll find them. It's a
15 couple hundred pages, so --

16 Q. Well let me put it this way. Sir, there are
17 memos in here that you have received from other staff
18 members at The Tobacco Institute; right?

19 A. I -- I'm sorry, --

20 MR. FLYNN: Just focus him what page we're
21 after.

22 A. -- what page are you --

23 Q. For example, can you turn to the page that ends
24 with 625.

25 MR. FLYNN: The Bates number.

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1 THE WITNESS: What was that now?

2 MR. FLYNN: 625.

3 THE WITNESS: Six -- I don't see the
4 numbering sequence.

5 MR. FLYNN: Down here on this Bates stamp
6 thing.

7 THE WITNESS: Oh. 625. 625. 63 -- okay.
8 625.

9 A. Yes, that's a memo to me, it would appear.

10 Q. You have no reason to doubt you didn't get that
11 memo.

12 A. No, I do not.

13 Q. Sir, could you turn to the portion of the
14 document that ends with Bates number 582.

15 A. 582. 582. Should I keep my finger on this
16 other here?

17 Q. No. That's fine. Why don't you just turn to
18 the page that ends with Bates number 582.

19 A. 582.

20 Q. And there is --

21 A. Mine's blank.

22 Q. Well it says Appendix 5-1-B; right?

23 A. Yes, uh-huh.

24 Q. If we turn to the next page, at the top of the
25 page we see "APPENDIX 5-1-B;" right?

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- 1 A. Yes, ma'am.
- 2 Q. Down at the bottom it says "Clearance
3 Procedures." Could you read that section to
4 yourself.
- 5 A. I've read it.
- 6 Q. I'm sorry, I think the section continues on to
7 the next page. Have you read that, too?
- 8 MR. FLYNN: How much do you want him to
9 read? The whole next page or --
- 10 MS. WIVELL: That would be fine.
- 11 MR. FLYNN: So all of page six.
- 12 A. Read the whole page, Ms. Wivell?
- 13 Q. Yes, please.
- 14 A. Okay. I've finished.
- 15 Q. Now sir, this particular section of Exhibit 5 --
16 752 concerns procedures for release of public
17 statements by The Tobacco Institute; doesn't it?
- 18 MR. FLYNN: Again, it speaks for itself,
19 but --
- 20 A. Yes.
- 21 Q. Now sir, are the procedures that are described
22 here procedures that are still in place at The
23 Tobacco Institute?
- 24 A. No.
- 25 Q. What procedures are different today than is --

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1 than what is described here?

2 A. Well I have to go back. I have to take a
3 moment, I have to go back -- back through. Okay?

4 I don't have clearance required for member
5 companies, on the first -- first page, in sufficient
6 detail to show who's responsible and the names and
7 titles of contacts with each member company. That's
8 not something that we're doing.

9 The Institute's expected to clear all news
10 releases and other major pronouncements with Mr.
11 Chilcote. There's news releases that are made
12 that --

13 Is there some problem? Is there something --
14 Q. I think it's counsel and his cell phone that's
15 making that noise, sir.

16 MR. GOOLD: I'm sorry.

17 A. Let's see.

18 Q. I'm not sure you completed your last answer.
19 Are there news releases that are made today
20 without --

21 A. There are some news releases that go out that --
22 that -- I don't clear every news release that goes
23 out.

24 Legal counsel does clear it.

25 We don't have -- litigation counsel clearance is

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1 not part of it.

2 Most of these people have since retired.

3 There's a lot of these people have retired, some of
4 these.

5 MR. FLYNN: Talking about the names in
6 paragraph two.

7 A. The names Bill Shinn, Don Hoel, Robert
8 Northrip. I think some of them retired. I don't
9 know. Maybe they have retired or gone to other law
10 firms. Bernie O'Neill, Pat Sirridge.

11 The Tobacco Institute no longer has a
12 newsletter.

13 We no longer have a Tobacco Observer article,
14 Ms. Wivell.

15 We don't have as many -- we don't have -- I'm
16 not sure -- standing committees. We don't have
17 standing committees, which is another --

18 That's a few of them, just off the top of my
19 head, that -- so it's without really going -- going
20 through it.

21 Q. All right. Let me see if I understand. You
22 correct me if I'm wrong.

23 The clearance procedures that you have been
24 reviewing on the page that ends with Bates number 583
25 of Exhibit 752 were procedures that were in place in

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1 1982; is that right?

2 A. I'm not sure if this was ever adopted or not.

3 I'd have to go back. I can't recall. This

4 "Preliminary Discussion Paper" is the way it's

5 headed here. I'm not sure it was adopted or --

6 Q. But it would be --

7 A. -- not.

8 Q. -- fair to say that when you started with The

9 Tobacco Institute, there were procedures in place for

10 approval of public statements before they went out;

11 right?

12 A. Would you repeat that question, --

13 Q. Yes, sir.

14 A. -- please?

15 Q. When you joined The Tobacco Institute in 1981,

16 there were procedures in place for approval or

17 clearance of public statements made by the Institute

18 before they went out.

19 A. Yes, ma'am.

20 Q. All right. Now they may not be the procedures

21 that are outlined here in Exhibit 752; right?

22 A. Yeah. Well I don't know what the -- the other

23 procedures were, but there were --

24 When I joined in '81, well there were procedures

25 in place for clearance, yes.

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1 Q. All right. And would it be fair to say that
2 when you joined the Institute in 1981, all major
3 press releases were to be cleared by you?

4 A. All major press releases to be cleared by me?
5 Yes.

6 Q. All right. And in fact all ads that were placed
7 by The Tobacco Institute had to be cleared by you;
8 right?

9 A. No.

10 Q. All major ads relating to smoking-and-health
11 issues.

12 A. Well I knew of them, but they -- obviously I'm
13 not an expert in ads, so they -- you know, they would
14 say --

15 This is what they'd recommend. I'd say fine,
16 you know.

17 Q. Okay. And as a matter of fact, today the major
18 pronouncements that The Tobacco Institute makes have
19 to be cleared by you.

20 A. No. They -- it's pretty much standard operating
21 procedure almost, most things we would make an
22 announcement about.

23 Q. All right. But you would agree that when you
24 started with The Tobacco Institute, all public
25 statements on smoking-and-health-related issues had

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1 to be cleared by attorneys representing either --
2 representing The Tobacco Institute; right?

3 A. I don't know if all work were or were not.
4 There was a clearance procedure where you'd check
5 with your counsel, obviously, before you'd release.
6 Like any corporation or trade association.

7 Q. In other words, what you're saying is that when
8 you joined The Tobacco Institute in 1981, major press
9 releases, for example, relating to smoking and health
10 had to be run by outside counsel representing The
11 Tobacco Institute.

12 A. I -- I don't know who the releases would be run
13 by, but I would hope that completed staff work had
14 been done, and I -- that assumed that clearance from
15 our counsel had been checked off with the people
16 preparing the releases.

17 Q. Now sir, you say you assume. You believe that
18 that was the procedure that was in place when you
19 joined the Institute; right?

20 A. Yes.

21 Q. And in fact that procedure is still in place
22 today. Major press releases having to do with
23 smoking-and-health issues had to be approved before
24 they were made by outside counsel representing The
25 Tobacco Institute.

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1 A. Well our counsel being Covington & Burling, with
2 which -- we'd run a press release by them. Yes, we
3 would do that.

4 Q. Now --

5 A. A major press release.

6 Q. Press releases relating to smoking and health;
7 right?

8 A. Really don't make that many press releases
9 concerning smoking and health. I can't think of any.

10 Q. But they --

11 If there were press releases that were made,
12 they would have been run by outside counsel before
13 they were released; right?

14 A. You say "outside counsel." You mean Covington &
15 Burling?

16 Q. Well sir, Covington & Burling was one of the
17 outside counsel for The Tobacco Institute; right?

18 A. It -- it is our outside counsel, singular.

19 Q. All right. Well just so we're clear here, press
20 releases concerning smoking and health would have
21 been run by Covington & Burling before they were
22 released to the press; right?

23 A. Yes.

24 Q. And in fact that's the practice today; isn't it?

25 A. Yes. Major.

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1 Q. Now, sir, --

2 A. Major press releases.

3 Q. -- there's also reference in the second
4 paragraph on the page that ends with Bates number 584
5 to approval by Shook, Hardy & Bacon in Kansas City;
6 isn't there, sir?

7 MR. FLYNN: Again it speaks for itself,
8 but --

9 No, I object. The document says either/or,
10 but -- the first paragraph says either the Institute
11 or litigation counsel.

12 A. What was your question now?

13 Q. Sir, there's also reference in the second
14 paragraph on the page that ends with Bates number 584
15 to approval by Shook, Hardy & Bacon in Kansas City;
16 isn't there, sir?

17 MR. FLYNN: Objection, it speaks for
18 itself. And it doesn't say that. Read the thing to
19 her and then we can move on.

20 A. It says clearances are handled with Covington &
21 Burling, counsel of the Institute. Designates Mr.
22 Rupp, Mr. Temko. Litigation counsel to the members
23 is Shook, Hardy & Bacon. Clearances are handled with
24 the senior partner or people designated by him.

25 Q. And sir, the people designated by him that are

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1 listed there were partners at Shook, Hardy & Bacon;
2 weren't they?

3 A. Yes.

4 Q. And sir, isn't it true that counsel -- I'm
5 sorry, strike that.

6 Isn't it true that Shook, Hardy & Bacon was
7 counsel for The Tobacco Institute?

8 A. I don't believe -- believe so. They were legal
9 advisors. Our counsel has always been Covington &
10 Burling.

11 Q. Well what do you or --

12 How do you distinguish between counsel and legal
13 advisors?

14 A. Well I'm sure that Shook, Hardy & Bacon, as
15 we -- as we mentioned earlier, worked for some of the
16 member companies. They may or may not have worked
17 for us at that time. I do not recall.

18 Q. So are you saying that because Shook, Hardy &
19 Bacon was litigation counsel to some of the member
20 companies, that major releases were approved by them
21 before they were made by The Tobacco Institute?

22 A. In the beginning, back at that date --

23 MR. FLYNN: The early '80s?

24 A. -- in the early '80s, Mr. Kloepper would have
25 gotten clearance from Covington & Burling, and I

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1 would assume Shook, Hardy & Bacon.

2 Q. Now sir, did major press releases having to do
3 with cigarette smoking also have to be approved by
4 the member companies --

5 A. No.

6 Q. -- of The Tobacco Institute?

7 A. No.

8 Q. Now you mentioned that --

9 A. Could I clarify something that -- that --

10 I don't know if all releases were cleared by
11 these two companies. I start thinking about, let's
12 say, a release on -- on employment in the tobacco
13 industry in the state of North Carolina, or what's
14 the tax burden or something like that. I don't know
15 the extent of these clearances.

16 Q. All right. Well let's put it this way: Would
17 you agree that press releases relating to whether
18 smoking causes disease were either run by Covington &
19 Burling or Shook, Hardy & Bacon?

20 A. Yes.

21 Q. Are press releases having to do today with
22 whether smoking causes disease run by and approved by
23 Covington & Burling or Shook, Hardy & Bacon?

24 MR. FLYNN: It assumes that there are such
25 releases.

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- 1 A. We really don't make numbers of releases on
2 smoking and health. And you're correct that it would
3 be cleared by Covington & Burling. We do not send
4 them to Shook, Hardy & Bacon.
- 5 Q. When did the procedure change so that press
6 releases were no longer sent to Shook, Hardy & Bacon?
- 7 A. I can't remember.
- 8 Q. Now sir, you mentioned that The Tobacco
9 Institute no longer has The Tobacco Institute
10 Newsletter.
- 11 A. That's correct.
- 12 Q. What was The Tobacco Institute Newsletter?
- 13 A. I think it was just news on anything that came
14 out or most things that came out concerning tobacco.
15 Just sort of like, oh, the top items. Would be sort
16 of like USA Today, I guess, or a digest of what was
17 out there. Just --
- 18 Q. Sort of the USA Today of The Tobacco Institute?
- 19 A. Just, you know, reporting on whatever.
- 20 Q. I have to warn you again, we cannot talk, both
21 of us, at the same time.
- 22 A. Okay. Were you talking over me or was I talking
23 over you?
- 24 Q. I don't know, but --
- 25 A. Well --

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- 1 Q. -- we got to stop it.
- 2 A. Okay. All right.
- 3 Q. Now sir, when did The Tobacco Institute stop
- 4 sending out The Tobacco Institute Newsletter?
- 5 A. I can't recall.
- 6 Q. Approximately when?
- 7 A. In the late '80s, I -- that's a guess. I -- I
- 8 can't remember. It was no big deal.
- 9 Q. What do you mean it was no big deal?
- 10 A. I mean it was just --
- 11 You know, some functions you continue and some
- 12 you -- you don't continue.
- 13 Q. All right. Who --
- 14 To whom was the Tobacco Institute Newsletter
- 15 sent?
- 16 A. Sent to anybody that had an interest in -- in --
- 17 in tobacco, people -- growers and farm groups and
- 18 people in -- distributors, retailers. I don't know.
- 19 We had a -- a mailing list. But that would be the
- 20 kind of people, I'd think, who would be of interest.
- 21 Q. Congressmen?
- 22 A. I don't know if there were any members of
- 23 Congress or not. If they had an interest, we would
- 24 have sent it to them, so --
- 25 Q. State legislators?

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- 1 A. I -- I don't know. If you are asking if we had
2 a -- every state legislator received a copy of the
3 Tobacco Newsletter, I think I'm on safe ground by
4 saying no.
- 5 Q. Was it sent to major news outlets?
- 6 A. I don't know.
- 7 Q. Now there also is a reference here to the
8 Tobacco Observer, and you said that the Tobacco
9 Observer is no longer published.
- 10 A. Yes.
- 11 Q. What was the Tobacco Observer?
- 12 A. It was --
- 13 In fact I think it was a lot -- pretty
14 duplicative of the newsletter. I'm not sure if --
15 if -- if it came out at the same time or not, my
16 memory doesn't serve me. But it was again, you know,
17 the same thing pertaining to a whole range of issues
18 or concerns that would affect the tobacco industry.
- 19 Q. And it was sent to members of Congress?
- 20 A. I don't know. I think it probably would be just
21 about the same as -- as those that we were talking
22 about earlier.
- 23 Q. And the Tobacco Observer and The Tobacco
24 Institute Newsletter were official publications of
25 The Tobacco Institute; wasn't it?

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- 1 A. Yes, ma'am.
- 2 Q. All right. Why don't we put this document
- 3 aside.
- 4 A. Okay.
- 5 Q. Sir, I know it was before your time, but have
- 6 you become familiar with a document entitled "A Frank
- 7 Statement to Cigarette Smokers?"
- 8 A. No, ma'am.
- 9 Q. You've never seen it?
- 10 A. No, ma'am.
- 11 Q. Let me show you what's previously been marked --
- 12 A. I don't know if I've ever -- I --
- 13 I don't know until I see it if I have or
- 14 haven't. I don't know.
- 15 Q. All right. Let me show you what's previously
- 16 been marked in this litigation, it is entitled "A
- 17 Frank Statement to Cigarette Smokers;" right?
- 18 A. Yes.
- 19 Q. Why don't you take a moment and read it.
- 20 A. I've read it.
- 21 Q. Now sir, you've now read the Frank Statement to
- 22 cigarette smokers?
- 23 A. Yes, ma'am.
- 24 Q. Now sir, this particular exhibit says at the
- 25 bottom, "Tobacco Industry Research Committee."

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- 1 Right?
- 2 A. Yes, ma'am.
- 3 Q. Do you understand that the Tobacco Industry
- 4 Research Committee was the predecessor to the CTR?
- 5 A. I don't know. If you say it is, fine. I
- 6 don't -- I don't know.
- 7 Q. Well, it says underneath the Tobacco Industry
- 8 Research Committee sponsors; right?
- 9 A. Yes, ma'am.
- 10 Q. And it lists several sponsors of the Frank
- 11 Statement; doesn't it?
- 12 A. Yes.
- 13 Q. And included among those sponsors are several
- 14 members of what is now The Tobacco Institute; right?
- 15 A. Yes.
- 16 Q. And among the sponsors were included Brown &
- 17 Williamson Tobacco Corporation?
- 18 A. Yes, ma'am.
- 19 Q. And they were a founding member of The Tobacco
- 20 Institute; weren't they?
- 21 A. I believe so.
- 22 Q. It lists Lorillard as a sponsor; doesn't it,
- 23 sir?
- 24 A. Yes, ma'am.
- 25 Q. They were a founding member of The Tobacco

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- 1 Institute; weren't they?
- 2 A. I think so.
- 3 Q. It lists Philip Morris as a sponsor of the Frank
- 4 Statement; doesn't it, sir?
- 5 A. Yes, ma'am.
- 6 Q. And Philip Morris was a founding member of The
- 7 Tobacco Institute; wasn't it?
- 8 A. Yes, ma'am.
- 9 Q. Lists R. J. Reynolds Tobacco Company as a
- 10 sponsor of the Frank Statement; doesn't it, sir?
- 11 A. Yes.
- 12 Q. And RJR was a founding member of The Tobacco
- 13 Institute; wasn't it?
- 14 A. I believe so.
- 15 Q. It also lists The American Tobacco Company;
- 16 right?
- 17 A. Yes.
- 18 Q. And The American Tobacco Company was a founding
- 19 member of The Tobacco Institute; wasn't it?
- 20 A. I believe so.
- 21 Q. Now sir, if we assume that this document was
- 22 written in 1950 -- or was published in the 1950s, it
- 23 would predate The Tobacco Institute's formation;
- 24 wouldn't it?
- 25 A. Yes, ma'am.

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1 Q. And that's because The Tobacco Institute was
2 formed -- formed in 1958.

3 A. I think, yes. Yes.

4 When is this document now?

5 Q. I believe it's 1954, sir.

6 A. This is '54. Okay. '54 document.

7 Q. And it's --

8 If indeed it was published in 1954, the Frank
9 Statement to Cigarette Smokers would predate the
10 formation of The Tobacco Institute; wouldn't it?

11 A. Yes, it would.

12 Q. Now sir, in this Frank Statement the sponsors
13 make a solemn promise to smokers to let them know
14 what they find out about cigarette smoking and
15 health; don't they?

16 MR. FLYNN: Objection, it speaks for
17 itself. If you want to read it, that's fine. I
18 don't know of any solemn promises in there. It's all
19 paraphrasing.

20 A. I'm sorry, I lost -- lost your -- your train --
21 my -- my train of thought on your question.

22 Q. All right. Well sir, having read the Frank
23 Statement, you would agree that the sponsors make a
24 promise to cigarette smokers to let them know what
25 the companies find out about cigarette smoking and

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1 health.

2 MR. FLYNN: Again, --

3 Q. Isn't that true?

4 MR. FLYNN: -- the document speaks for
5 itself. If the word "promise" is in there, it's in
6 there.

7 A. I don't see the word, but --

8 I'd have to reread it to find that. Do you want
9 to -- I mean what it says is what it says.

10 Q. All right. Well sir it says at point one, "We
11 are pledging aid and assistance..." right?

12 A. I'm sorry, I've lost --

13 Oh, I see. Okay. Yes, it says -- this document
14 says "We are pledging aid and assistance...." Yes,
15 ma'am.

16 Q. And pledging means the same thing as promise;
17 right?

18 A. Well I don't -- I don't think --

19 I don't think so.

20 Q. All right. Well it says at the bottom, "This
21 statement is being issued because we believe that
22 people are entitled to know where we stand on this
23 matter and what we intend to do about it." Right?

24 A. Well it says --

25 The document says, "This statement is being

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1 issued because we believe that people are entitled to
2 know where we stand on this matter and what we intend
3 to do about it." That's the complete statement.

4 Q. All right. Among the things that are -- is said
5 here is, "We believe the products we make are not
6 injurious to health." Right?

7 MR. FLYNN: She's on the other column now.
8 Right there.

9 A. That's what the doc -- let's see. That's what
10 the document says, yes.

11 Q. And then up above it also says there is no proof
12 that cigarette smoking is one of the causes.

13 MR. FLYNN: Again objection. You're
14 paraphrasing.

15 Q. Referring to lung cancer; correct?

16 A. No, that isn't what it says. It says, "There is
17 no proof that cigarette smoking is one of the causes
18 of" --

19 Q. Now sir, --

20 A. Let's see here.

21 Q. -- are you a smoker?

22 A. Yes.

23 Q. How long have you smoked?

24 A. Since I was about 35 years old.

25 Q. And how old are you now, sir?

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1 A. Do I got to tell you?

2 Sixty.

3 Q. So you've smoked for approximately 25 years?

4 A. Right.

5 Q. You were not a smoker back in 1954 then?

6 A. No, ma'am.

7 Q. Sir, reading this document today, you would
8 expect that the statements made by the sponsor
9 members in this document would be correct; wouldn't
10 you?

11 A. If I --

12 Would you repeat that, please?

13 Q. Yes. Reading this document today, you would
14 expect that the statements made in the Frank
15 Statement would be correct; wouldn't you?

16 MR. FLYNN: Again objection, vague and
17 ambiguous. If you can answer it. "Reading this
18 document today" --

19 A. I -- I don't know what would be my --

20 I don't know what I'd think, frankly, by reading
21 it then or reading it today. I'm not sure I
22 understand the question.

23 Q. All right. Well sir, reading it today as you
24 sit here, reading the statement, quote, "There is no
25 proof that cigarette smoking is one of the causes,"

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1 you would expect that at the time that this document
2 was written, that was an accurate statement; wouldn't
3 you?

4 A. I would sus --

5 Yes.

6 Q. And that's because you would agree that when
7 someone, whether it be an individual or company,
8 makes a public statement about a product that it
9 makes, it's got to be truthful in what it says.

10 A. You would hope so.

11 Q. Well you would expect that, sir; wouldn't you?

12 A. Yes.

13 Q. And sir, isn't it true that as the person
14 responsible for approving many of the major press
15 releases relating to smoking and health, you wanted
16 those press releases to be as accurate as possible;
17 right?

18 MR. FLYNN: Objection in the sense that it
19 implies he had anything to do with this document.
20 But this is separate from the document.

21 A. Well any -- any statement I make, or as
22 president of the association, anyhow, I would hope
23 would be as truthful as possible.

24 Q. Because you don't want to make deceptive
25 statements; right?

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1 A. That's correct.

2 Q. And The Tobacco Institute does not want to make
3 deceptive statements; does it?

4 A. That is correct.

5 Q. And if The Tobacco Institute made deceptive
6 statements to the public, it would be a breach of
7 their duty; wouldn't it, sir?

8 A. Well like anyone, you try and correct it. I'd
9 try to correct it if I thought that anything was said
10 that was not factual.

11 Q. All right. Well sir, if you found out something
12 was said that was not factually correct, you would
13 want to correct it because it would be a breach of
14 The Tobacco Institute's duty to speak honestly to the
15 public; wouldn't it?

16 MR. FLYNN: I object, it's vague,
17 ambiguous, calls for total speculation. What
18 statement? What time? About what subject?

19 A. Well anything we release, we try to have it
20 factual.

21 Q. Well the reason you try and have it factual is
22 because you recognize you have a duty to speak
23 accurately to the public; right?

24 A. We have a duty to --

25 Any information we send out for -- to anyone we

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1 want to be as factual as possible.

2 Q. You don't want it to be misleading; do you?

3 A. No, I do not want our statements to be
4 misleading.

5 Q. And it would be --

6 You would recognize that it would be a breach of
7 The Tobacco Institute's duty to send out a statement
8 that was misleading; right?

9 A. As I've said before, we do not -- we try to be
10 factual and we -- we do want to send out correct
11 information.

12 Q. I understand that, sir. And one of the reasons
13 you do that is because you recognize it would be a
14 breach of your duty --

15 A. I'm not sure what you mean by the term "breach
16 of -- of my duty."

17 Q. All right. Well sir, you understand that The
18 Tobacco Institute, when it speaks on subjects
19 relating to smoking and health, must speak
20 accurately; right?

21 MR. FLYNN: You've asked this five times
22 now. It's just getting repetitive. He's not going
23 to keep answering it.

24 A. I -- I do want to be factual on any information
25 that we release at The Tobacco Institute.

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1 Q. And the reason you want to be factual is because
2 when The Tobacco Institute speaks on a subject
3 relating -- relating to smoking and health, it
4 recognizes it has a duty to the public not to
5 misrepresent what it says.

6 MR. FLYNN: Objection, he's already said he
7 doesn't understand what your "duty" reference refers
8 to. But if you can answer it, go ahead.

9 A. I think we have a duty to -- to people which we
10 represent to say things correctly, and also to the
11 people that receive it.

12 Q. All right. And this duty that -- that goes to
13 the people who receive it, that includes -- strike
14 that.

15 Concerning this duty to the people who receive
16 the information you send out, you would agree that it
17 would be improper to mislead those people in any way;
18 right?

19 MR. FLYNN: I object, it's vague and
20 ambiguous. But --

21 A. We do want to send out factual information as we
22 know it, and I certainly do not want to mislead
23 people. Yes, ma'am.

24 Q. And you would agree, too, that withholding
25 important information from the public would also be a

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1 breach of that duty to the people who receive
2 information; right?

3 MR. FLYNN: Objection, that's a whole
4 different subject. That's so vague and ambiguous.

5 A. Bothers me a little bit because I don't know --

6 What might be important to you or to me may not
7 be important to other people. So I don't -- I -- I
8 don't know how I could answer that.

9 Q. Well sir, if you're talking about
10 smoking-and-health-related issues, for example --
11 strike that.

12 If The Tobacco Institute is making public
13 statements about smoking-and-health-related issues,
14 it would be important not to withhold information
15 from the public when it makes those statements; isn't
16 that true?

17 MR. FLYNN: I object, it's so
18 argumentative, vague and ambiguous that it -- as
19 phrased it's just totally unfair to this witness.

20 A. I would not want to withhold any -- any
21 information.

22 Q. That would be a breach of The Tobacco
23 Institute's duty to the people who are receiving the
24 information; right?

25 MR. FLYNN: Same objection.

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1 A. I don't -- I don't --

2 MR. FLYNN: It's vague and ambiguous.

3 A. I just get --

4 I'm just not really sure what you mean by a
5 breach of my -- my duty. Withholding --

6 I said that I would not withhold information if
7 somebody wanted the information or wanted The Tobacco
8 Institute's perspective. And when we send out that
9 perspective, I'd like to have it as factual and
10 truthful.

11 Q. You don't want it to be deceptive; do you, sir?

12 A. No, ma'am.

13 Q. Because that would be wrong to send out
14 something that was deceptive; isn't that true?

15 A. Yes, I think it would be wrong.

16 Q. You would agree that it would be important for
17 The Tobacco Institute to tell the public the same
18 thing that its member cigarette companies were
19 telling their employees; right?

20 MR. FLYNN: Objection, that's so vague and
21 ambiguous it's impossible to answer. What is the
22 company telling their employees? How does he know
23 that?

24 A. I --

25 Would you repeat that question again?

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1 Q. Certainly.

2 It would be important for The Tobacco Institute
3 to tell the public the same thing the companies were
4 telling their employees internally; right?

5 A. I have no way of knowing what the -- what the
6 companies told their employees, so I just don't know
7 how I could answer that. But I have no way of -- of
8 knowing; they got hundreds of thousands of employees.

9 Q. Well let me put it this way: Would you agree
10 that it would be improper for The Tobacco Institute
11 members to say one thing through The Tobacco
12 Institute and say the contrary thing internally?

13 MR. FLYNN: Again I object, it's so vague
14 and ambiguous and speculative it just defies answer.

15 A. See, I -- I have trouble because I -- I don't
16 know what we're talking about or what -- what they
17 may be telling their employees. I don't know the
18 subject matter. I just -- it's so far-ranging
19 that --

20 Q. Well sir, have you ever heard the phrase
21 "speaking out of both sides of your mouth?"

22 A. Yes, ma'am.

23 Q. And you understand --

24 A. It's a Western phrase.

25 Q. Pardon me?

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1 A. It's a Western phrase; isn't it?

2 Q. Okay. What do you understand that Western
3 phrase to mean?

4 A. On the one hand or the other hand; right?

5 Q. Is that what you understand it to mean? Is that
6 right?

7 A. I guess so. There's a lot of different
8 interpretations.

9 Q. All right. Using that interpretation that you
10 just gave us, it would be improper for the tobacco
11 manufacturers to say one thing through The Tobacco
12 Institute on one hand and say another thing
13 internally; isn't it?

14 MR. FLYNN: I have the same objection.

15 This is so vague and ambiguous and so incredibly
16 broad, I don't think anybody -- and how does --

17 He can answer it.

18 A. I --

19 Again, I don't think I could improve upon my
20 answer. I'll try if you want to rephrase it another
21 way, but I just --

22 Q. Well sir, --

23 A. -- don't know what you're asking.

24 Q. -- let me ask you this: Would it be right for
25 the cigarette manufacturers to speak out of both

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1 sides of their mouths when it came to the -- what
2 they were saying publicly about cigarette smoking and
3 health?

4 MR. FLYNN: Again it's so vague and
5 ambiguous.

6 A. I don't --

7 MR. FLYNN: I have no idea what you're
8 talking about with "both sides of their mouths."

9 A. I don't think the cigarette manufacturers would
10 speak out of both sides of their mouth. I -- I don't
11 know the subject matter you're talking about, so it's
12 hard for me to respond.

13 Q. Okay. Well keeping in mind that you don't think
14 that they would, it would be wrong for them to speak
15 out of both sides of their mouths; wouldn't it?

16 MR. FLYNN: The same objection, vague and
17 ambiguous and unclear. It's speculative.

18 A. I think it would be wrong for anyone to speak
19 out of both sides of their mouth.

20 Q. And going back to this Frank Statement to
21 Cigarette Smokers, it would be wrong for them to
22 speak out of both sides of their mouth after they've
23 told the people we believe the people are entitled to
24 know where we stand on this matter and what we intend
25 to do about it.

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1 A. I don't know if anybody would be speaking out of
2 both sides of their mouth or -- or what this -- this
3 refers to. This -- I don't see that in this
4 document, frankly.

5 Q. I -- I understand you don't see it there, sir.
6 But you would agree that it would be improper for the
7 tobacco manufacturers who sponsored this Frank
8 Statement to say one thing to the public and then say
9 something entirely different on the issue of
10 cigarette smoking and health internally; wouldn't
11 you, sir?

12 MR. FLYNN: Again, I have the same
13 objection, it's so vague and ambiguous and broad.

14 A. I don't know what the --

15 I wouldn't know what the subject is. I wouldn't
16 know if it's within the same timeframe, the same
17 context. I think if I was to speak to you about some
18 issue, events have changed or something. Maybe you
19 would -- I don't -- I don't know. I don't know how
20 to answer the question, I guess.

21 Q. Well sir, let's say, for example, that if the
22 cigarette manufacturers had proof that cigarette
23 smoking was one of the causes of lung cancer, it
24 would be improper for them to say, "Well, there's no
25 proof," like they did here in this Frank Statement,

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1 and then cover up the fact that they had such
2 evidence; right?

3 MR. FLYNN: It's a multiple question, asks
4 for three different set of facts to be affirmed in
5 the answer. Also, it's the height of speculation.

6 A. I lost track of the question. Would you repeat
7 it?

8 Q. Sure.

9 For example, if the cigarette manufacturers had
10 proof that cigarette smoking was one of the causes of
11 lung cancer, it would be improper for them to say,
12 like they did here in the Frank Statement, there is
13 no proof that cigarette smoking is one of the causes
14 of lung cancer; right?

15 A. I don't think the cigarette manufacturers would
16 make a false statement.

17 Q. Well sir, keeping in mind that you don't think
18 that they would, let's see if I can go back and
19 re-ask the question again so I can get an answer.

20 If the cigarette manufacturers had proof that
21 cigarette smoking was one of the causes of lung
22 cancer, it would be improper for them to say, like
23 they did here in the Frank Statement, that there is
24 no proof that cigarette smoking is one of the causes;
25 isn't that true?

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1 A. If they -- if they had proof, they should say
2 that they had proof.

3 Q. All right. And sir, this Frank Statement --
4 strike that.

5 And sir, if they claimed they had no proof when
6 they had proof, it would be a violation of their duty
7 to the people who received this Frank Statement to
8 claim to the contrary; wouldn't it?

9 MR. LAYDEN: Objection, legal conclusion.

10 A. Yes.

11 Q. I'm sorry, I didn't hear your answer.

12 MR. FLYNN: He said yes.

13 A. Yes.

14 Q. Now sir, this Frank Statement to Cigarette
15 Smokers starts out by claiming, "Recent reports on
16 experiments with mice have given wide publicity to a
17 theory that cigarette smoking is in some way linked
18 with lung cancer in human beings." Right?

19 A. Yes, that's what the document says.

20 Q. And it goes on to say, "Although conducted by
21 doctors of professional standing, these experiments
22 are not regarded as conclusive in the field of cancer
23 research." Right?

24 A. That's what the document says.

25 Q. Now sir, if the cigarette manufacturers who

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1 sponsored this Frank Statement had evidence that
2 experiments with mice did support the theory that
3 cigarette smoking was in some way linked with lung
4 cancer in human beings, it would be a violation of
5 their duty to say to the contrary; wouldn't it, sir?

6 MR. FLYNN: Objection. I don't know how in
7 the world this man can express judgments on those
8 issues. It's also so vague and ambiguous what you
9 mean they had knowledge of or whatever that it's so
10 unclear I don't think it can be answered.

11 A. I think that anyone should tell the truth.

12 Q. And sir, the reason that it's important for
13 someone who is speaking to the public to tell the
14 truth is because the public reads and believes
15 what -- what's written; right?

16 A. No, I wouldn't say that. I think people get a
17 lot of information that they read, hear. It's up to
18 them to make the decision what they believe.

19 Q. But they have a right to act with information on
20 the subject of smoking and health; don't they?

21 A. They have a right to act to information on any
22 subject, I would think.

23 Q. And if someone misrepresents the state of their
24 knowledge, for example, with regard to cigarette
25 smoking and health, it would be a violation of their

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1 duty to people who are reading the -- the ad, for
2 example; right?

3 MR. FLYNN: I object, it asks him to judge
4 something that he's got no foundation to judge.

5 MS. WIVELL: I'll withdraw the question.

6 Q. If the cigarette manufacturers had in this Frank
7 Statement to Cigarette Smoking -- Cigarette Smokers
8 misstated the state of their knowledge, it would be a
9 violation of their duty to the people who read this
10 ad; wouldn't it, sir?

11 MR. FLYNN: Again, you're asking him to
12 speculate on conduct and judgments that he has no
13 knowledge of or information about. Pure speculation
14 and conjecture.

15 A. As I said, I think everyone ought to try and
16 tell the truth.

17 THE REPORTER: We have to change tape. Off
18 the record, please.

19 (Discussion off the record.)

20 BY MS. WIVELL:

21 Q. Sir, going back to this Frank Statement for a
22 moment, do you believe that people who read it had
23 a -- a reasonable right to rely on what the sponsors
24 were saying here to be accurate?

25 A. Yes.

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1 Q. Sir, you've never seen any ad by any of the
2 sponsor members saying anything in this Frank
3 Statement wasn't accurate.

4 A. No.

5 Q. Now sir, are you aware that The Tobacco
6 Institute issued a statement about tobacco and
7 health?

8 A. I can't -- no, I don't -- I --
9 I can't recall.

10 Q. All right. Showing you what's previously been
11 marked as Exhibit 3504, it is a statement about
12 tobacco and health that shows The Tobacco Institute
13 as one of the groups that placed this statement;
14 right?

15 A. Yes.

16 Q. And the other group that placed this statement
17 or issued this statement was the Tobacco Industry
18 Research Committee; right?

19 A. Yes.

20 Q. Have you seen this document before, sir?

21 A. No.

22 When was this document? I have not seen it.

23 Q. All right. Why don't you take a moment and read
24 it. But for the record, first, I think that the
25 Bates number on the front is 513334548.

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1 MR. FLYNN: It appears un -- it appears
2 undated, so I --

3 That seems to be the witness's question, but --

4 A. Yeah. Is there any date? I mean --

5 There's no date to this. You asked if I had
6 seen it or anything. I don't see a date.

7 Q. All right. Well why don't you read it, sir.

8 A. Okay. You don't know what the date was.

9 Q. Well according to the information that we were
10 given by R. J. Reynolds, who produced it to us in
11 this litigation, I believe it's 1963.

12 A. '63, okay.

13 Yes, ma'am, I've read it.

14 Q. Now sir, this document says, "We recognize that
15 we have a special responsibility to the public...;"
16 doesn't it?

17 MR. FLYNN: That's part of a sentence. I
18 ask you to read the whole sentence. As phrased, it's
19 just a phrase, not the sentence. You can affirm it
20 says those words.

21 A. It says -- it --

22 It says those words -- words, yes. That's what
23 it says.

24 Q. All right. Just so we're clear here, this
25 document is titled "A Statement About Tobacco and

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1 Health." Right?

2 A. Yes, it is.

3 Q. And it starts out noting that "Serious charges
4 have been made about tobacco use."

5 A. That's what the document says.

6 Q. And it also says "The tobacco industry has taken
7 these charges seriously;" right?

8 A. Yes, ma'am.

9 Q. And when you were learning about The Tobacco
10 Institute before you became its president, did you
11 understand that the tobacco industry was taking the
12 charges about smoking and the relationship to
13 cigarette smoking and health seriously?

14 A. Yes.

15 Q. And sir, you understand since you've been the
16 president of The Tobacco Institute that the cigarette
17 industry has taken those charges seriously; right?

18 A. Yes, we take charges seriously.

19 Q. And that the charges that we're referring to
20 here is the charges that cigarette smoking causes
21 disease; right?

22 A. I don't see where it says that. It says "A
23 Statement About Tobacco and Health.

24 "Serious charges have been made about tobacco
25 use" is what it is. "The tobacco industry has taken

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1 these charges seriously."

2 Q. Well, and "these charges," that you understand
3 to be charges that cigarette smoking causes disease;
4 right?

5 A. I don't see where it says causes disease.

6 MR. FLYNN: Affects health it says.

7 THE WITNESS: What?

8 MR. FLYNN: It says, "Throughout the world,
9 scientists are investigating many factors that may
10 affect health."

11 THE WITNESS: Okay, all right.

12 Q. Well sir, you understand that this statement is
13 about whether cigarette smoking causes health
14 problems; right?

15 MR. FLYNN: Objection, it speaks for itself
16 and it doesn't say that. The way you say it isn't
17 what it says.

18 A. This article says what it says. I mean what --
19 what -- what do you want --

20 Q. Well, sir, --

21 A. I'm not sure what the point is.

22 Q. -- I'm not trying to be cute here, but what this
23 particular advertisement is talking about is smoking
24 and health; right?

25 A. Of tobacco and health, right, that's what it

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1 says.

2 Q. You would agree --

3 A. "A Statement About Tobacco and Health."

4 Q. All right.

5 A. I don't want to be argumentative with you,

6 but --

7 Q. Okay. And would you agree from 1981 to the
8 present, that the cigarette manufacturer members of
9 The Tobacco Institute have recognized that they have
10 a special responsibility to the public to determine
11 whether certain diseases have been associated with
12 tobacco use?

13 A. Oh, I think there's a lot of other groups
14 besides just the tobacco companies that are concerned
15 with causes of various diseases.

16 Q. Well I understand that, sir, but I'm focusing on
17 the companies that The Tobacco Institute is made up
18 of.

19 You would agree that since 1981 and up to the
20 present, these cigarette manufacturer members of The
21 Tobacco Institute have recognized that they have a
22 special responsibility to the public to determine
23 whether certain diseases have been associated with
24 tobacco use; right?

25 MR. FLYNN: Again I object, it's vague and

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1 ambiguous.

2 A. I can't speak for member companies, but --

3 I don't know. I'm not sure I understand the

4 question yet.

5 Q. Well sir, The Tobacco Institute said in this ad,

6 "We recognize that we have a special responsibility

7 to the public to help scientists determine the facts

8 about tobacco and health and about certain diseases

9 that have been associated with tobacco use;" right?

10 A. That's what they said at that time back in the

11 '60s. You've made a jump now to --

12 I'm not sure --

13 Q. I'm asking --

14 A. -- about the leap, but it says -- I don't know

15 what was their thought back in 19 --

16 You said it was the '50s or '60s when they made

17 this?

18 Q. Well sir, let me ask you this: Isn't it true

19 that The Tobacco Institute, from the time you became

20 its president, recognized that it had a special

21 responsibility to the public to help scientists

22 determine the facts about tobacco and health and

23 about certain diseases that have been associated with

24 tobacco use?

25 MR. FLYNN: Object, it's vague and

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1 ambiguous. What do you mean by "special
2 responsibility?"

3 If you can answer --

4 A. I don't know what -- what you're trying to get
5 at. I -- I -- I -- I don't know what the --

6 I'm really not sure what you're trying to get
7 at.

8 Q. Okay. Well this ad was taken out by the Tobacco
9 Industry Research Committee and The Tobacco
10 Institute; right?

11 A. That was back in 1960s or '50s.

12 Q. All right.

13 A. This -- right?

14 Q. Had --

15 A. I don't know what they were thinking or what was
16 going on.

17 Excuse me for talking over. Go ahead and finish
18 your question.

19 Q. Well has The Tobacco Institute ever taken out an
20 ad from the time this one was published until today
21 that denied this special responsibility to the public
22 that they mention here in Exhibit 3504?

23 A. I don't know past -- I have no way of knowing up
24 to 19 -- I have not --

25 I can't recall anything from 1981 on; I don't

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1 know what ads were run before that time.

2 Q. Well when you were getting up to speed when you
3 became president of the tobacco industry, did you
4 learn anything that would be contrary to the
5 statement "We recognize that we have a special
6 responsibility to the public to help scientists
7 determine the facts about tobacco and health and
8 about certain diseases that have been associated with
9 tobacco use?"

10 MR. FLYNN: Objection, as phrased that's
11 just argumentative.

12 A. As -- as I was getting up to speed, as you put
13 it, it just never came up.

14 Q. You can't direct me as you sit here today to any
15 document that was published by The Tobacco Institute
16 that basically denies this special responsibility
17 that they mention here in Exhibit 3504.

18 A. I cannot recall any.

19 Q. Now sir, it goes on to say, "Scientific advisors
20 inform us that until much more is known about such
21 diseases as lung cancer, medical science probably
22 will not be able to determine," and then it -- then a
23 little glitch there -- "the facts about tobacco and
24 health and about certain diseases that have been
25 associated with tobacco use." Right?

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1 MR. FLYNN: I believe it says "whether
2 tobacco or any other single factor plays a causative
3 role or whether such a role, direct or indirect" --

4 A. I don't see where you're --

5 Q. Let me try it again.

6 A. -- Where you're all reading.

7 Q. I'll withdraw the question.

8 MR. FLYNN: This paragraph here.

9 A. Mine's not very clear.

10 Q. Mine's not very clear either, but maybe we can
11 puzzle it through together.

12 A. All right.

13 Q. Sir, does that paragraph in the second column
14 say something to the effect, "Scientific advisors
15 inform us that until much more is known about such
16 diseases as lung cancer, medical science will --
17 probably will not be able to determine whether
18 tobacco or any other single factor plays a causative
19 role and whether such a role might be direct or
20 indirect, incidental or important?"

21 A. That's what that paragraph says. You filled in
22 the blanks.

23 Q. Okay. But to the best of your knowledge, that's
24 what that paragraph says.

25 A. Yes, ma'am.

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1 Q. All right. And it goes on to say, "We shall
2 continue all possible efforts to bring the facts to
3 light." Right?

4 A. Yes, that's what it says.

5 Q. And from the time that you became president of
6 The Tobacco Institute, did the Institute continue all
7 possible efforts to bring the facts to light?

8 A. All possible efforts. I -- you know, that's
9 pretty hard to judge what all efforts would be. We
10 did --

11 Any time anything came to light that we thought
12 we should have a perspective on, well we would put
13 that perspective out. But people get information a
14 lot of different places besides The Tobacco
15 Institute, obviously.

16 Q. Well sir, did the people who read this have a
17 right to rely on the fact that The Tobacco Institute
18 would continue all possible efforts to bring the
19 facts to light regarding tobacco and health?

20 A. Ma'am, it's hard for me to judge what people
21 were thinking back in the '50s. I don't know. I
22 really don't.

23 Q. Well, while you were president of The Tobacco
24 Institute, did you ever see anything that told the
25 public that you weren't going to continue all

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1 possible efforts to bring the facts to light

2 regarding tobacco and health?

3 A. Would you rephrase it --

4 Would you ask that question again?

5 Q. Certainly.

6 Since you've been president of The Tobacco

7 Institute, did you ever see anything that told the

8 public that the Institute was not going to continue

9 all possible efforts to bring the facts to light

10 regarding tobacco smoking and health?

11 A. I've never seen anything, no.

12 Q. It says at the conclusion of this ad, "We plan

13 to discuss this in a message to be published

14 tomorrow." Do you know what message that refers to?

15 A. No, ma'am.

16 Q. It says in the paragraph immediately before

17 that, "Until then, it is important to keep questions

18 about tobacco use in the perspective warranted by the

19 known facts;" right?

20 A. Yes, ma'am, that's what it says.

21 Q. And you would agree that it is important for a

22 smoker to have all the facts in order to accurately

23 determine whether or not they should smoke; right?

24 MR. FLYNN: Objection, it's vague and

25 ambiguous and overbroad. "All the facts."

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1 A. I think -- (coughing) excuse me.

2 I think people should be aware of all the
3 information that's out there, as much as they can get
4 from as many different sources as -- as they can get
5 it from, and make their own decision.

6 Q. And sir, do you understand that in this
7 statement about tobacco and health, that The Tobacco
8 Institute made a promise to the public to get all the
9 facts out to those smokers?

10 MR. FLYNN: Again I object, it speaks for
11 itself. I don't see the word "promise" in there.
12 But a court or jury can construe it as it sees fit.

13 A. I'm not sure I'm -- I'm -- your reference of
14 "all the information" with the "promise." Is there
15 something specifically --

16 I don't know where it says that in this article.

17 Q. Well sir, it may not use the word "promise," but
18 when The Tobacco Institute says "We shall continue
19 all possible efforts to bring the facts to light" in
20 the context of tobacco smoking and health, wouldn't
21 it be appropriate for someone reading that to believe
22 that The Tobacco Institute would do just that?

23 MR. FLYNN: Just pure speculation and
24 conjecture.

25 A. Whatever the debate was at that particular time,

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1 I have no way of knowing what they were saying other
2 than what's -- or what people should be thinking
3 other than what's just said here.

4 Q. Well the "they" that you're referring to is The
5 Tobacco Institute that you're the president of today;
6 right?

7 A. No. I say -- well, the --

8 The "they" that I'm referring to, what do you
9 mean by that? I'm not sure.

10 Q. Well you said in your answer, "I have no way of
11 knowing what they were saying," and I'm saying the
12 "they" that you're referring to, in part, was the
13 Tobacco Institute that you're president of right now;
14 right?

15 A. The word "they" refers -- my usage was people on
16 both sides of the debate, anyone who had an opinion.

17 Q. Well the "we" in this sentence, "We shall
18 continue all possible efforts to bring the facts to
19 light," that refers to The Tobacco Institute Research
20 Committee and The Tobacco Institute; right?

21 A. Yes, ma'am. Right.

22 Q. And in fact, because The Tobacco Institute
23 speaks for its members, it would also include the
24 members who are -- I'm sorry, the members of The
25 Tobacco Institute; right?

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1 MR. FLYNN: Objection, it speaks --

2 Ah, forget it. Go ahead.

3 A. This would be The Tobacco Institute, yes.

4 Q. Well, and its members; right?

5 A. Yes, and the members of the Institute.

6 Q. Now sir, you would agree that The Tobacco
7 Institute back in the '60s had no responsibility to
8 speak. It didn't have to say anything; did it?

9 MR. FLYNN: Objection, it's so vague and
10 ambiguous. About anything at any time in any area?

11 MS. WIVELL: Let me rephrase the question.

12 Q. Back in the '60s when this exhibit, "A Statement
13 About Tobacco and Health," was published, there was
14 no legal requirement that The Tobacco Institute take
15 out an ad about the subject of smoking and health;
16 was there?

17 A. No, there was not.

18 Q. And you understand that today, up to today,
19 there is no legal requirement for The Tobacco
20 Institute to say anything on the subject of smoking
21 and health to the public; right?

22 MR. FLYNN: Again, that asks for a legal
23 conclusion he's not capable of providing.

24 A. That information is provided on warning labels.

25 Q. Okay. Perhaps we're not communicating, sir.

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1 Today, you understand there's nothing that makes
2 The Tobacco Institute issue a press release about
3 smoking and health.

4 A. Yes, that's true.

5 Q. There is nothing; is there?

6 A. There is nothing.

7 Q. And you understand that throughout the period
8 that you've been president of The Tobacco Institute,
9 there is no legal requirement that requires The
10 Tobacco Institute to take out ads about issues
11 relating to smoking; is there?

12 A. None that I'm aware.

13 Q. But The Tobacco Institute undertook through this
14 ad to make a statement about tobacco and health;
15 didn't it, sir?

16 MR. FLYNN: Objection, foundation.

17 A. You're asking about today, and this goes back to
18 1950, and I don't know what was going on back in the
19 1950s.

20 Q. Well sir, you have no reason to believe that
21 this is not an ad that was taken out by The Tobacco
22 Institute; do you?

23 A. I have no reason, no.

24 Q. And sir, you would agree that in taking out an
25 ad, The Tobacco Institute had the responsibility to

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1 speak accurately; didn't it?

2 A. I think I've answered that before, that I think
3 companies should speak accurately.

4 Q. And sir, you would agree that if The Tobacco
5 Institute misrepresented anything in this ad, Exhibit
6 3504, that would be a breach of its duty; right?

7 MR. FLYNN: Again objection, it calls for a
8 legal conclusion. It's also repetitive; you asked it
9 five times, 10 times.

10 A. I keep saying I don't know what was going on at
11 that time and what was the motivation, so I'd have to
12 make a lot of assumptions here, and I -- I --

13 Q. Well --

14 I'm sorry, sir. Were you done?

15 A. Go ahead. Yes, I was done.

16 Q. Well sir, as the person who approves major press
17 releases for The Tobacco Institute, you would agree
18 that if any of the statements made in this statement
19 about tobacco and health, Exhibit 3504, were not
20 true, that would be improper; wouldn't it?

21 A. Yes, I've said that.

22 Q. And that would be because it would be wrong to
23 make a deceptive or misleading statement to the
24 public; wouldn't it?

25 MR. LAYDEN: Objection, vague.

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1 A. That's a -- how do you know something --

2 If you're saying something, as we were talking
3 about, at a particular time, that later on it might
4 turn out to be deceptive, that's making a lot of
5 assumptions. I -- I -- I'm not sure I can respond to
6 that. I don't know what they were thinking or what
7 they were saying at that time.

8 Q. Okay. But you told us earlier that in the
9 public statements that The Tobacco Institute issued
10 while you were president, you wanted them to be
11 accurate; right?

12 A. Based on the information I have, I'd like them
13 to be accurate, yes, ma'am.

14 Q. All right. And sir, it would be wrong for them
15 to be deceptive or misleading in any way; wouldn't
16 it?

17 MR. FLYNN: Now that's -- he's going to --
18 I'm going to tell him to stop answering this
19 because it's the 12th time, counsel. Even that rule
20 has got some limitation. It's the last time he's
21 going to say it's wrong to give erroneous
22 information.

23 Go ahead, answer one more time, then I'm going
24 to stop it. And if the judge says I'm wrong, I guess
25 I'll live with it.

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1 A. Yes, it is wrong, again, to give information.

2 You should tell the truth.

3 Q. Now sir, does The Tobacco Institute believe it
4 has a special responsibility to try and deter youth
5 from smoking?

6 A. Yes, we do.

7 Q. It recognizes it has that special
8 responsibility; right?

9 A. Well it has -- it has accepted the -- the
10 responsibility, but we -- we also know that other
11 people have the same responsibility: parents,
12 government.

13 MR. FLYNN: I guess we're done with this
14 one.

15 Q. Sir, showing you what's been previously marked
16 in this litigation as Plaintiffs' Exhibit 412, this
17 is a Tobacco Institute press release; isn't it, sir?

18 A. Yes, it's --

19 It would appear that's it.

20 Q. For the record, Exhibit 412 is Bates numbered
21 500008079; right?

22 A. Yes, ma'am.

23 MR. FLYNN: Dated January 12th, '65.

24 Q. Why don't you take a moment and read this
25 document, sir.

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1 A. I have read it.

2 Q. Now it says there in the second paragraph, "The
3 cigarette industry's position has been, and is, that
4 of thoughtful, responsible consideration of all the
5 questions which have been raised regarding smoking
6 and health. The industry will continue forcefully
7 its support of responsible research efforts to
8 establish the true facts." Right?

9 A. That's what it says.

10 Q. Now sir, did the tobacco industry also believe
11 it was important to establish the true facts
12 concerning youth smoking?

13 A. I don't know what they were thinking back --

14 When was this? '55?

15 MR. FLYNN: Sixty-five. Down here.

16 A. Sixty -- oh, in '65.

17 I do not know.

18 Q. Well sir, have you reviewed any of the public
19 statements that have been made by The Tobacco
20 Institute concerning youth smoking back in the '60s?

21 A. No, ma'am.

22 MR. FLYNN: Is this as legible as you got?
23 The second page is illegible.

24 (Plaintiffs' Exhibit 753 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 753, this is a document that
4 begins with the Bates number 1005105164; right?

5 MR. FLYNN: As presented to the witness,
6 the second page particularly is really difficult to
7 read.

8 A. Yes, that's --

9 Yes, that's the correct number, yes.

10 Q. All right. Why don't you take a moment and read
11 the document, sir.

12 A. You got to be kidding.

13 Q. Give it your best shot. This is the best they
14 gave to us.

15 A. Okay.

16 Q. Why don't we go off the record.

17 A. Have you got the same copy I've got?

18 MS. WIVELL: Why don't we go off the record
19 a moment.

20 THE REPORTER: Off the record, please.

21 (Discussion off the record.)

22 MR. FLYNN: You've just given the witness a
23 yellow-marked copy to facilitate reading the thing,
24 so he's now reading a copy marked with the yellow
25 highlight.

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1 THE WITNESS: Okay. You want yours back?

2 MS. WIVELL: That's okay. You can keep
3 it. It might facilitate things.

4 BY MS. WIVELL:

5 Q. Sir, Exhibit 653 --

6 MR. FLYNN: 753.

7 MS. WIVELL: I'm sorry, thank you.

8 Q. Exhibit 753 ends on the second page with the
9 statement, "The Tobacco Institute, September, 1975;"
10 right?

11 MR. FLYNN: Well maybe. That's the only
12 part readable on the bottom half of the second page.
13 Whether it ends with that, who knows?

14 A. There's probably -- there's a lot --

15 Does yours have all that other writing on the
16 bottom?

17 Q. It sure does.

18 A. Is that --

19 Q. I think what happened is this was probably a
20 carbon copy, and maybe the carbon bled through.

21 A. Okay.

22 Q. But let's go back to the question.

23 A. All right.

24 Q. Sir, on the second page, Exhibit 753 ends with
25 the statement "The Tobacco Institute, September,

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1 1975," right?

2 MR. FLYNN: Again I object that it ends
3 with it. That's the last readable words on it.

4 A. Yes, it does. It seems to. I don't know.

5 Q. All right. And if we go back to the first page
6 of Exhibit 753, there is reference to the tobacco
7 industry policy with regard to smoking and young
8 people; right?

9 A. Yes.

10 Q. And it says there, "The cigarette industry has
11 enunciated as early as 1963 its policy of neither
12 advertising nor promoting cigarettes to young
13 people." Right?

14 A. Yes.

15 Q. Now sir, do you understand today that the policy
16 of the cigarette industry as enunciated is neither to
17 advertise nor promote cigarettes to young -- to young
18 folks?

19 A. Yes.

20 Q. Why is that?

21 A. As is stated here, they just feel that's -- they
22 feel that smoking is an adult decision.

23 Q. Why is smoking an adult decision, sir?

24 A. Because people should have all the information
25 relative to tobacco. There's a time in everyone's

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1 life for making responsible decisions, and you should
2 do it --

3 And also by state law, many of the states have
4 laws that do not allow youth smoking. We encourage,
5 and have through our education programs, to try and
6 make people aware of that.

7 Q. Now sir, there is reference in the -- on the
8 first page of Exhibit 753 to a reference -- or to a
9 statement by Joseph F. Cullman, 3rd of The Tobacco
10 Institute Executive Committee; right?

11 A. Yes, ma'am.

12 Q. Now who was Joseph Cullman?

13 A. He was the chairman of Philip Morris, I believe,
14 at that time.

15 Q. All right. And do you understand to the best of
16 your knowledge that in July of 1969, he was the chair
17 of The Tobacco Institute Executive Committee?

18 A. I would suspect he was. I do not know.

19 Q. All right. But it says here that he testified
20 before the Senate Commerce Subcommittee; right?

21 A. Yes, ma'am.

22 Q. And the subject of his testimony that Mr.
23 Cullman gave was youth smoking; right?

24 A. Yes, ma'am.

25 Q. And he told the subcommittee, "It is the

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1 intention of the cigarette manufacturers to continue
2 to avoid advertising directly to young persons; to
3 abstain from advertising in school and college
4 publications; not to distribute sample cigarettes or
5 engage in promotional efforts on school and college
6 campuses; not to use testimonials from athletes or
7 other celebrities who might have special appeal to
8 young people; to avoid advertising which represents
9 that cigarette smoking is essential to social
10 prominence, success or sexual attraction; and to
11 refrain from depicting smokers engaged in sports or
12 other activities requiring stamina or conditioning
13 beyond those required in normal recreation;" right?

14 A. Yes, ma'am.

15 Q. Now sir, to the best of your knowledge, since
16 you have been president of The Tobacco Institute, has
17 it been the intention of cigarette manufacturers to
18 not do those things that Mr. Cullman testified to the
19 Senate Commerce Subcommittee about?

20 A. Yes.

21 Q. So to the best of your knowledge, none of the
22 cigarette manufacturer members of The Tobacco
23 Institute have ever promoted their cigarettes to
24 children in the manner that's described here by Mr.
25 Cullman.

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1 MR. LAYDEN: Objection, foundation.

2 MR. FLYNN: It's also "ever." You've now
3 gone throughout all history I guess.

4 A. Well I haven't seen every -- every ad. I know
5 we have a code which sort of tracks. This is
6 probably when the Code of Good Practice was adopted
7 for our member companies, and I feel that they try to
8 live within that code.

9 MS. WIVELL: Why don't we take a break for
10 lunch.

11 THE REPORTER: Off the record, please.

12 (Luncheon recess taken at 11:58 o'clock
13 a.m.)

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1 AFTERNOON SESSION

2 (Deposition reconvened at 1:20 o'clock
3 p.m.)

4 MS. WIVELL: Before we go forward with the
5 questioning, I would like to correct a misstatement
6 that I have made in the record, apparently a couple
7 of times. Earlier in the deposition we talked about
8 Plaintiffs' Exhibit 446 entitled "REPORT ON POLICY
9 ASPECTS OF THE SMOKING AND HEALTH SITUATION IN
10 U.S.A.," dated October 1964 and Bates numbered
11 1003119099 as its first Bates number, and I realize
12 now that apparently I have developed dyslexia as I
13 get older and I have been referring to Exhibit 446 as
14 Exhibit 466, and I'd just like the record to reflect
15 that it should be, correctly referenced, Exhibit 446.
16 BY MS. WIVELL:

17 Q. Sir, before we took a lunch break we were
18 talking about youth smoking. Going back to that
19 subject, does the tobacco industry believe it has an
20 affirmative duty to prevent youths from smoking?

21 A. Yes, ma'am.

22 Q. And sir, would you agree that the cigarette
23 manufacturers have tried everything possible to
24 discourage youth from smoking?

25 A. Yes, ma'am.

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1 Q. Now sir, would you agree that the cigarette
2 manufacturers of America do not want youngsters to
3 smoke?

4 A. Yes, ma'am.

5 Q. As a matter of fact, representatives from The
6 Tobacco Institute have gone on 20/20 and said those
7 kinds of things.

8 A. Yes, ma'am.

9 Q. And that was Ann Browder who went on 20/20 and
10 talked about the cigarette manufacturers not wanting
11 youth smoking.

12 A. I was thinking more recently than that,
13 particularly after we started several youth smoking
14 programs in the '80s, then we've had about four
15 programs, and there's been spokespersons at the
16 Institute that appeared on programs based upon our
17 youth programs that we sponsored at The Tobacco
18 Institute.

19 Q. All right. And among those spokespersons, one
20 of them was Walker Merryman?

21 A. Yes, ma'am.

22 Q. And who were the other spokespeople who went on
23 TV and talked about wanting to keep youth from
24 smoking?

25 A. Ann Browder was a lady that -- I guess she

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1 probably was employed about 10 years ago, and since
2 that time we've had -- I can't recall all of them,
3 but of course we've had Walker Merryman and Brennan
4 Dawson and Tom Lauria. I -- a couple others, but I
5 can't recall their names right now. So we've had
6 about, say, five to 10 different people as employees,
7 but they moved on to other -- other jobs.

8 Q. And these folks have all gone on TV and made
9 statements to the effect that the cigarette
10 manufacturers in this country don't want kids
11 smoking?

12 A. Yes.

13 Q. Now sir, isn't it --

14 Is it your opinion that the industry is
15 committed to a program of advertising and promotional
16 practices designed to ensure that smoking remains an
17 adult custom?

18 A. I feel that's what they -- they try to do. They
19 do.

20 Q. And sir, hasn't The Tobacco Institute actually
21 put out a booklet entitled "Smoking And Young
22 People -- Where The Tobacco Industry Stands" that
23 says that?

24 A. I cannot recall that publication.

25 Q. Well do you recall there came a period of time

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1 after you became president of The Tobacco Institute
2 where the subject of youth smoking was taken up by
3 the Doonesbury cartoon?

4 A. Doonesbury cartoon has been very active in the
5 whole smoking -- on the smoking issue over a number
6 of years.

7 Q. And --

8 A. I can't recall all of it.

9 Q. -- keeping --

10 A. His name was Mr. Butts, you know, that goes --
11 follows presidents around and things like that, is a
12 result of the Doonesbury cartoon.

13 Q. And in the cartoon the presidents that are
14 followed around are presidents of tobacco companies;
15 right?

16 A. No. I'm talking about president -- or when Dole
17 was running for president, Mr. Butts would show up at
18 political rallies.

19 Q. Would it be correct to say that the author of
20 the Doonesbury cartoon felt that the claim that the
21 tobacco companies wanted to keep kids from smoking
22 wasn't accurate?

23 MR. FLYNN: Objection, there's no
24 foundation. How he could ever know that, what
25 Trudeau or whatever that guy's name is thought?

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1 A. I got to be honest with you, I really don't read
2 Doonesbury. I don't read comic strips that much. So
3 I'm not an authority on that column.

4 Q. Well sir, didn't The Tobacco Institute -- well
5 let's put it this way: The tobacco -- strike that.

6 Doonesbury published in the cartoon a coupon
7 where kids could write in to The Tobacco Institute
8 for free cigarettes; right?

9 A. I -- I think I recall one of them like --
10 like -- like that, yes. But --

11 Q. And The Tobacco Institute received thousands of
12 those coupons from children asking for free
13 cigarettes; didn't it?

14 A. Yes. We were concerned because we thought it
15 was really misleading. First off, we're not into
16 distribution of cigarettes, and -- and really the --
17 anything we would turn out would be to try and
18 acquaint children not to smoke, or any publications
19 to their parents. We thought at the time that
20 that -- that -- again going from recall, as I -- I
21 can't remember the specifics, but I -- I remember we
22 were inundated, I think, with coupons thinking that
23 we were going to give cigarettes out to people from
24 his column, and we thought that that was in fact
25 misleading.

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1 (Plaintiffs' Exhibit 754 was marked
2 for identification.)

3 BY MS. WIVELL:

4 Q. Sir, showing you what's been marked as
5 Plaintiffs' Exhibit 754, this is a document that
6 begins with the Bates number TIMN0133916; right?

7 A. Yes, ma'am.

8 Q. And it's entitled "Smoking And Young People:
9 Where The Tobacco Industry Stands;" right?

10 A. Yes.

11 MR. FLYNN: It's dated '91.

12 Q. Sir, this document was sent to people who wrote
13 in asking for free cigarettes because of the
14 Doonesbury -- Doonesbury cartoon; right?

15 A. What was this? This --

16 I'm not sure I understand. You say this -- you
17 say this is an industry document?

18 Q. Well sir --

19 MR. FLYNN: Look at -- take a second. Let
20 the witness take a look.

21 MS. WIVELL: Okay. Why don't you take a
22 look at it.

23 MR. FLYNN: Skim the document.

24 THE WITNESS: All right.

25 (Discussion between

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1 the witness and his counsel.)

2 A. I've read it. I -- I've glanced through it. I
3 haven't read it word for word.

4 Q. Sir, is this document, Exhibit 754, the booklet
5 that was sent to people who wrote in requesting free
6 cigarettes as a result of the Doonesbury cartoon?

7 A. I don't know.

8 Q. Well it is a document that was put out by The
9 Tobacco Institute; right?

10 A. Yes.

11 Q. Now sir, it says on the second page, "The
12 tobacco industry does not want young people to
13 smoke." Right?

14 A. Yes.

15 Q. And goes on to say, "That is why the industry,
16 in December 1990, launched a set of bold, new
17 initiatives designed to ensure that smoking remains
18 an adult custom." Right?

19 A. Yes.

20 Q. And it goes on to say -- it goes on to talk
21 about the industry's long-standing commitment and
22 positive action to discourage youth smoking and to
23 reduce youth access to cigarettes; right?

24 A. Yes.

25 Q. Now sir, is it your testimony that the tobacco

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1 industry has done everything it could to ensure that
2 kids don't smoke?

3 MR. FLYNN: I object to the frame -- the
4 question as vague and ambiguous, "everything it
5 could." But go ahead and answer.

6 A. I think to answer your question, you say "done
7 everything," I guess is sort of in the eye of the
8 beholder, but I feel that we have certainly done as
9 much as we can. I know the Institute, it's one of
10 our major programs that we've had going on for the
11 last four or five years.

12 Q. Well sir, my question is a little broader than
13 just the Institute going back four or five years. Do
14 you believe that the tobacco industry has done
15 everything it could to ensure that youths don't
16 smoke?

17 A. Well I'm troubled with "everything they could."
18 I don't -- again, I don't know how -- how you could
19 evaluate that. I know that each company is just --
20 not each and every company, but most of the companies
21 have had, either through the Institute or
22 individually, programs in the youth area.

23 Q. You're talking about youth prevention programs.
24 Is that what you're talking about in your last
25 answer?

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1 A. Yes, ma'am.

2 Q. Sir, I'm going to show you what's previously
3 been marked in this litigation as Plaintiffs' Exhibit
4 602. Sir, following up on what you have just
5 previously testified, do you see, first of all, that
6 this is entitled "Houlihan, Lokey, Howard & Zukin,
7 Financial Advisors" on the first page?

8 A. Yes, ma'am.

9 Q. Have you seen this document before?

10 A. No.

11 Q. Would you turn to the second page.

12 Do you see there the title of the document
13 beginning at the top of the page?

14 A. Second page?

15 Q. I'm sorry. No, no, no. You were on the right
16 page before. Go back one.

17 A. Okay.

18 Q. There do you see it, a heading that begins
19 "State of Minnesota?"

20 MR. FLYNN: The bigger print. She wants
21 you to look at the blue -- blue ink. There you go.

22 THE WITNESS: Oh, that's what she's calling
23 the title?

24 MR. FLYNN: Yes.

25 Q. There, sir, it says "State of Minnesota and Blue

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1 Cross and Blue Shield versus Philip Morris
2 Incorporated, et al, Amended Expert Analysis of
3 Advertising, R&D and Youth Prevention Expense by Paul
4 J. Much?"
5 A. Yes, I see that.
6 Q. Dated July 1997?
7 A. Yes, ma'am.
8 Q. Now sir, I have placed tabs on the top of
9 certain pages of that document, Exhibit 602. Would
10 you turn to the first one.
11 A. Yes.
12 Q. That is entitled "Philip Morris Youth -- Youth
13 Prevention Expenditures to Total Domestic Tobacco
14 Sales, 1983 through nineteen eighty -- '94;" right?
15 A. Yes.
16 Q. And this is a pie chart which compares the total
17 domestic tobacco sales for Philip Morris to the total
18 prevention -- youth prevention expenditures; right?
19 A. Yes.
20 Q. And the total domestic tobacco sales is
21 portrayed here as the green part of the pie; right?
22 A. Yes.
23 Q. And the youth prevention expenditures are
24 indicated by an orange line; right?
25 A. Yes. An orange line?

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1 MR. FLYNN: A black line I believe.

2 There's a line anyway.

3 THE WITNESS: Yeah.

4 Q. All right. There's a line, and you can't tell
5 what color it is, whether it's orange or black;
6 right?

7 A. Yes.

8 Q. All right. Sir, would you turn to the next page
9 that's tabbed.

10 A. Next tab. Oh, this is --

11 Q. All right. That is entitled "Philip Morris --
12 Morris Youth Prevention Expenditures to Total
13 Domestic Tobacco Sales, 1954 through 1994;" right?

14 A. Yes.

15 Q. And in this particular graph --
16 Again it's a pie chart; right?

17 A. Yes.

18 Q. The total domestic tobacco sales for Philip
19 Morris are indicated in green; right?

20 A. Yes.

21 Q. And the amount that was spent for youth
22 prevention expenditures is indicated by a line;
23 right?

24 A. Yes.

25 Q. Can you tell whether that line is orange or

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1 black?

2 A. It's black.

3 Q. All right. But it's very small in comparison
4 with the total domestic tobacco sales for Philip
5 Morris during this period; right?

6 A. Yes.

7 Q. Would you turn to the next tabbed page, sir. Is
8 it entitled -- I'm sorry, the next tabbed page. Is
9 it entitled "Youth Prevention Expenditures to
10 Advertising, Market and Promotion, 1983 to 1994?"

11 A. Yes.

12 Q. And do you understand that that pie chart
13 compares the total advertising and market and
14 promotional expenses from Philip Morris to their
15 total youth prevention expenditures?

16 A. Yes.

17 Q. And is the total prevention expenditures
18 indicated by a dark line?

19 A. This one's a red line.

20 Q. A red line.

21 And if we look down at the bottom, we see that
22 that red line is for youth prevention expenditures;
23 right?

24 A. Yes.

25 Q. And the total amount that Philip Morris spent

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1 for advertising, marketing and promotion is indicated
2 in this document -- or in this chart as -- in green;
3 right?

4 A. The total amount of their advertising and
5 marketing and promotion is in green?

6 Q. Is green.

7 A. Yes.

8 Q. That's right.

9 A. Yes.

10 Q. Would you turn to the next tabbed page, sir.

11 And there is a chart entitled "Youth Prevention
12 Expenditures to Advertising, Market and Promotion,
13 1969 through 1994?"

14 MR. FLYNN: Which one?

15 MS. WIVELL: I'm sorry.

16 MR. FLYNN: I don't think it's the same
17 thing.

18 THE WITNESS: No, I'm not --

19 MR. FLYNN: This is R&D expenditures.

20 MS. WIVELL: All right. I'm sorry, I must
21 have put it on the wrong page. Could you go back
22 one?

23 THE WITNESS: Sure.

24 MS. WIVELL: Can you -- I'm sorry, can you
25 go back to the --

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1 MR. FLYNN: Still on Philip Morris.

2 MS. WIVELL: -- charts concerning Philip
3 Morris?

4 THE WITNESS: Philip Morris.

5 Q. Do you have there a chart entitled "Youth
6 Prevention Expenditures to Advertising, Market and
7 Promotion, 1969 through 1994?"

8 A. Yes.

9 MR. FLYNN: No, this is '83.

10 THE WITNESS: '83? 1983 through 1994?

11 MS. WIVELL: All right, can you find one --

12 MR. FLYNN: Is there a number on this
13 thing?

14 MS. WIVELL: No, there's not.

15 THE WITNESS: What number do you want?

16 Q. Can you find a chart that talks about youth
17 prevention expenditures compared to advertising,
18 marketing and promotion from 1969 to 1994?

19 A. 1969 --

20 Here we are, right here.

21 Q. No.

22 A. 1969 to 1994?

23 Q. But that's research and development
24 expenditures; isn't it, sir?

25 A. Oh, okay. Yeah.

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- 1 Q. Well why don't we go on to the next tabbed
2 chart.
- 3 A. I don't think it's in here.
- 4 Q. Here.
- 5 A. Okay. Which one do you want me to go to now?
- 6 Q. Do you have --
- 7 A. This one right here, is that the one you want me
8 on now?
- 9 Q. Why don't we go to --
- 10 Do you have a tab that's marked RJR?
- 11 A. Yes.
- 12 Q. Why don't we go to that one.
- 13 A. Okay.
- 14 Q. Do you have a chart there entitled "Youth
15 Prevention Expenditures to Total Domestic Tobacco
16 Sales, 1983 to 1994?"
- 17 A. Yes.
- 18 Q. And that pie chart compares the amount that R.
19 J. Reynolds spent for -- or received for total
20 domestic tobacco sales, comparing it with what they
21 spent for youth prevention expenditures; right?
- 22 A. Yes.
- 23 Q. And the total domestic tobacco sales are
24 indicated in green on this pie chart?
- 25 A. Yes.

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1 Q. And of that pie chart, how much of the pie chart
2 is devoted to youth prevention expenditures?

3 A. 19,099,617.

4 Q. And it's indicated as a line; isn't it?

5 A. Yes.

6 Q. All right. So by far the majority -- I'm sorry.
7 Strike that.

8 MR. LAYDEN: Counsel, I'm --

9 Q. Can you go to the next page.

10 MR. LAYDEN: Objection. Counsel, on this
11 line of questioning, I just want the record to be
12 clear that you're asking this witness to confirm that
13 that's what this exhibit says, and that this witness
14 isn't testifying that these are in fact the
15 expenditures; correct?

16 MS. WIVELL: That's correct.

17 MR. LAYDEN: Okay.

18 Q. Can you turn to the next tabbed page, sir.

19 MS. WIVELL: I would like, however, the
20 record to reflect that the numbers came from
21 defendants' answers to interrogatories in this case.

22 MR. FLYNN: I don't know that that's
23 accurate.

24 MR. LAYDEN: I don't believe that's -- I
25 don't believe that's correct for all the numbers,

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1 counsel.

2 Q. All right, sir, do you have there a chart that
3 says "Youth Prevention Expenditures to Total Domestic
4 Tobacco Sales 1954 to 1994" for R. J. Reynolds?

5 A. Yes.

6 Q. All right. And again, the total domestic
7 tobacco sales that R. J. Reynolds received during
8 that period are indicated in green; right?

9 A. Yes.

10 Q. And the total youth prevention expenditures,
11 according to this pie chart, are indicated by a
12 straight line; right?

13 A. Yes.

14 Q. Is that line orange or black, sir?

15 A. Black.

16 Q. Can you go to the next tabbed page.

17 Now there is a chart entitled "R. J. Reynolds
18 Youth Prevention Expenditures to Advertising,
19 Marketing and Promotional Expenditures as Dated
20 1983-1994;" right?

21 A. Yes.

22 Q. And this pie chart compares the advertising,
23 marketing and promotional expenditures made by R. J.
24 Reynolds with the amount that it spent for youth
25 prevention during that same period; right?

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1 A. Yes.

2 Q. And the total that R. J. Reynolds spent for
3 advertising, marketing and promoting its cigarettes
4 is shown in green; right?

5 A. Yes.

6 Q. And the total that R. J. Reynolds spent during
7 the period 1983 to 1994 for keeping youth from
8 smoking is shown in orange.

9 A. Yes.

10 MR. FLYNN: We can stipulate to all this if
11 you want.

12 Q. Could you turn to the next --

13 MR. FLYNN: Just do you want to go through
14 it one by one?

15 MS. WIVELL: I do.

16 MR. FLYNN: They all -- they all show these
17 pie charts and they're marked. Have him say, yeah,
18 there's a line and there's a green piece. We'll
19 stipulate so it. But if you want to labor through
20 it, labor through it.

21 Q. Sir, you've now turned to the next tabbed page?

22 A. This --

23 Right, yes.

24 Q. Okay. It's entitled "Youth Prevention
25 Expenditures to Estimated Advertising, Marketing and

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1 Promotion Expenditures, 1983 to 1994;" right?

2 A. Yes.

3 Q. And this chart compares the amount that R. J.

4 Reynolds spent on -- or estimated to spend on

5 advertising, marketing and promotional expenditures

6 during that period compared to what it spent on youth

7 prevention expenditures; right?

8 A. Yes.

9 Q. And again, the estimated advertising, marketing

10 and promotion expenditures are shown in green?

11 A. Yes.

12 Q. And the amount of youth prevention expenditures

13 made by R. J. Reynolds from 1983 to 1994 is shown in

14 orange?

15 A. Yes.

16 Q. And it's the line on the graph -- on the pie

17 chart; isn't it?

18 A. Yes.

19 Q. Could you turn to the next page.

20 There is a graph entitled "Youth Prevention

21 Expenditures to Advertising, Marketing and

22 Promotional Expenditures as Dated 1954 through 1994"

23 for R. J. Reynolds; right?

24 A. Yes.

25 Q. And this is --

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1 This is a graph that compares advertising and
2 marketing and promotional expenditures for that
3 period versus youth prevention expenditures; right?

4 A. Yes.

5 Q. And the total that R. J. Reynolds spent for
6 advertising, marketing and promotion for cigarettes
7 during this period is shown in green; right?

8 A. Yes.

9 Q. And the total amount that it spent for youth
10 prevention during that same period is shown as a
11 small portion of the graph which is orange; right?

12 A. Maybe I'm colorblind, but you've been saying
13 orange and mine's red.

14 Q. All right.

15 A. But it doesn't make any difference.

16 Q. Okay, fair enough.

17 Now sir, if we turn to the next page, there is
18 another pie chart which compares the youth prevention
19 expenditures for R. J. Reynolds with estimated
20 advertising, marketing and promotional expenditures
21 during the years 1954 to 1994; right?

22 A. Yes.

23 Q. And again the total that RJR is estimated to
24 have spent in advertising, marketing and promotional
25 expenditures is shown in green; right?

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1 A. Yes.

2 Q. And the total of youth prevention expenditures
3 is shown in the red line?

4 A. Yes.

5 Q. Could you turn to the next tabbed page, please.

6 Do you have a chart there entitled "Youth
7 Prevention Expenditures to Total Domestic Tobacco
8 Sales 1983-1994" for Brown & Williamson?

9 A. Yes.

10 Q. And again, this is a pie graph which compares
11 the total domestic tobacco sales received by Brown &
12 Williamson with the total that it spent on youth
13 prevention; right?

14 A. Yes.

15 Q. And the total domestic tobacco sales are shown
16 as the green portion of the graph; right?

17 A. Yes.

18 Q. And the youth prevention expenditures are shown
19 as the line portion of the graph; right?

20 A. Yes.

21 Q. Could you turn to the next page, sir that's
22 tabbed.

23 Do you have a chart there entitled "Brown &
24 Williamson Youth Prevention Expenditures to Total
25 Domestic Tobacco Sales, 1954 to 1994?"

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1 A. Yes.

2 Q. And again, this is a pie graph that compares the
3 total domestic tobacco sales for that period versus
4 the total amount that Brown & Williamson expended to
5 keep youth from smoking; right?

6 A. Yes.

7 Q. And the green portion shows the total domestic
8 tobacco sales.

9 A. Yes.

10 Q. And the line shows the youth prevention
11 expenditures; right?

12 A. Yes.

13 Q. Sir, would you turn to the next tabbed page.

14 There is a graph entitled "Brown & Williamson
15 Youth Prevention Expenditures," comparing it to
16 advertising, marketing and promotional expenditures
17 from 1983 to 1994; right?

18 A. Yes.

19 Q. And again, this is a graph which compares -- or
20 I'm sorry.

21 Again, this is a pie chart which compares the
22 total that Brown & Williamson spent for advertising,
23 marketing and promotional expenses, comparing it with
24 what they spent for youth prevention expenditures;
25 right?

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1 A. Yes.

2 Q. And the total that they spent for advertising
3 and marketing and promotion is the green portion of
4 the graph.

5 A. Yes.

6 Q. And the youth prevention expenditures are the
7 line; right?

8 A. Yes.

9 Q. Would you turn to the next page, sir.

10 There is a graph entitled "Brown & Williamson
11 Youth Prevention Expenditures to Advertising,
12 Marketing and Promotional Expenditures 1958 to 1994."
13 Right?

14 A. Yes.

15 Q. And this is a graph that -- I'm sorry.

16 This is a pie chart that compares the
17 advertising, marketing and promotional expenditures
18 Brown & Williamson made during that period with the
19 youth prevention expenditures; right?

20 A. Yes.

21 Q. And the total that Brown & Williamson spent for
22 advertising, marketing and promotional expenditures
23 is depicted by the green portion of the graph; isn't
24 it, sir?

25 A. Yes.

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1 Q. And the part of the expenditures that it made to
2 prevent youth from smoking are indicated by a line;
3 right?

4 A. Yes.

5 Q. Would you turn to the next tabbed page.

6 There is a graph concerning information relating
7 to The American Tobacco Company; right?

8 A. Yes.

9 Q. And that graph is entitled "Youth Prevention
10 Expenditures to Total Domestic Tobacco Sales 1983 to
11 1994." Right?

12 A. Yes.

13 Q. And again, it's a pie chart that compares the
14 total domestic tobacco sales for American Tobacco
15 with what it spent to keep youth from smoking; right?

16 A. Yes.

17 Q. And the total domestic tobacco sales are
18 indicated in green?

19 A. Yes.

20 Q. What American Tobacco spent for youth prevention
21 of smoking is indicated by a line.

22 A. Yes.

23 Q. Would you turn to the next tabbed page, sir.

24 This is a graph entitled "American Tobacco Youth
25 Prevention Expenditures to Total Domestic Tobacco

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1 Sales, 1954 to 1994;" right?

2 A. Yes.

3 Q. And again, it's a pie chart that compares the
4 total amount that American Tobacco made from its
5 domestic tobacco sales, comparing it with what it
6 spent to try and keep youth from smoking; right?

7 A. Yes.

8 Q. And the total domestic tobacco sales are shown
9 in green on this graph; aren't they, sir?

10 A. Yes.

11 Q. And the totals that American Tobacco spent for
12 youth prevention expenditures are shown by a line;
13 right?

14 A. Yes.

15 Q. Now sir, would you turn to the next tabbed page.

16 There is a graph entitled "American Tobacco
17 Youth Prevention Expenditures to Advertising,
18 Marketing and Promotion Expenditures, 1983 to 1994;"
19 right?

20 A. I think I might have the wrong tab here.

21 Q. All right.

22 A. What was -- would you repeat -- youth --

23 Q. What's the title of the graph you have, sir?

24 A. "American Tobacco Youth Prevention Expenditures
25 to Advertising, Marketing and Promotional Expense,

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1 1983 to 1994."

2 Q. Okay. I thought --

3 MR. FLYNN: You were on the same page.

4 Q. -- that's what I said.

5 A. Okay. I lost track.

6 Q. And this is another pie chart that compares what
7 American Tobacco spent to advertise, market and
8 promote its products versus what it spent to prevent
9 youth from smoking; right?

10 A. Yes.

11 Q. Now the total that American spent for
12 advertising, marketing and promotional expenditures
13 is depicted in green; right?

14 A. Yes.

15 Q. And the total that American spent during this
16 same period to try and keep youth from smoking is a
17 straight line; isn't it, sir?

18 A. Yes.

19 Q. Now would you turn to the next tabbed page.

20 This is entitled "American Tobacco Youth
21 Prevention Expenditures to Advertising, Marketing and
22 Promotion Expenditures, 1954 to 1994;" right?

23 A. Yes.

24 Q. And again it compares the advertising
25 expenditures versus the youth prevention expenditures

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1 made on behalf of American Tobacco; right?

2 A. Yes.

3 Q. And the total spent for advertising, marketing
4 and promoting American's products is shown in green;
5 isn't it?

6 A. Yes.

7 Q. And the total youth prevention expenditures made
8 during the period 1954 to 1994 are shown as a
9 straight line; right?

10 A. Yes.

11 Q. Would you turn to the next tabbed page, sir.

12 This is another pie chart which talks about
13 youth prevention expenditures and compares it to
14 total domestic tobacco sales for the period 1983 to
15 1994 for the Liggett Company; right?

16 A. Yes.

17 Q. Now sir, the total domestic tobacco sales that
18 Liggett receives are indicated in green; right?

19 A. Yes.

20 Q. The total youth prevention expenditures are
21 indicated by a straight line; aren't they?

22 A. Yes.

23 Q. Would you turn to the next page.

24 This chart compares the youth prevention
25 expenditures to total domestic tobacco sales for

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1 Liggett between 1954 and 1994; right?

2 A. Yes.

3 Q. And again it's a pie chart; right?

4 A. Yes.

5 Q. And it compares the total domestic tobacco sales

6 for that 50-year period -- 40-year period, pardon me,

7 to what Liggett spent on preventing youth from

8 smoking during that same 40 years; right?

9 A. Yes.

10 Q. And the total domestic tobacco sales which

11 Liggett received during that period are shown in the

12 green portion of the graph.

13 A. Yes.

14 Q. And the total amount they spent on preventing

15 youth from smoking is shown with a straight line;

16 right?

17 A. Yes.

18 Q. Could you turn to the next tabbed page, sir.

19 Now this one is entitled "Liggett Youth

20 Prevention Expenditures to Advertising, Marketing and

21 Promotional Expenditures, 1983 to 1994;" right?

22 A. Yes.

23 Q. And in this graph or pie chart, the amount that

24 Liggett spent on advertising, marketing and promotion

25 for its products is compared with the amount that it

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1 spent during the same period on youth prevention
2 expenditures; right?

3 A. Yes.

4 Q. And the total amount spent on advertising,
5 marketing and promotion of its cigarette products is
6 shown in green; right?

7 A. Yes.

8 Q. And the total of -- that it spent during that
9 period on preventing youth from smoking is shown as a
10 straight line; isn't it?

11 A. Yes.

12 Q. Could you turn to the next tabbed page, sir.

13 This graph is entitled "Youth Prevention
14 Expenditures to Advertising, Marketing and
15 Promotional Expenditures, 1954 to 1994;" right?

16 A. Yes.

17 Q. Again, it's a pie chart that compares
18 advertising, marketing and promotional expenditures
19 made by Liggett with what Liggett spent on youth
20 prevention expenditures; right?

21 A. Yes.

22 Q. What it --

23 What Liggett spent advertising, marketing and
24 promoting its cigarettes is shown in green.

25 A. Yes.

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1 Q. What Liggett spent during the period 1954 to
2 1994 on preventing youth from smoking is a straight
3 line; isn't it, sir?

4 A. Yes.

5 Q. Could you turn to the next tabbed page.

6 There is information concerning the Lorillard
7 Company which is similar to what we have looked at
8 for the other companies; isn't that true?

9 A. Yes.

10 Q. This graph is entitled "Youth Prevention
11 Expenditures to Total Domestic Tobacco Sales, 1983 to
12 1994."

13 A. Yes.

14 Q. And it again is a pie chart that compares the
15 total domestic tobacco sales made -- or received by
16 Lorillard with the amount that it spent during that
17 period on preventing youth from smoking; right?

18 A. Yes.

19 Q. Sir, could you turn to the next tabbed page.

20 This is a pie chart entitled "Lorillard Youth
21 Prevention Expenditures to Total Domestic Tobacco
22 Sales, 1954 to 1994;" right?

23 A. Yes.

24 Q. And this compares the total that Lorillard
25 received from its domestic tobacco sales versus what

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1 it spent in youth prevention expenditures; right?

2 A. Yes.

3 Q. And again, the total domestic tobacco sales are

4 in green; right?

5 A. Yes.

6 Q. The total amount that Lorillard spent during

7 that 40-year period on preventing youth from smoking

8 is shown as a straight line; right?

9 A. Yes.

10 Q. Could you turn to the next tabbed page, sir.

11 There is a graph entitled "Lorillard Youth

12 Prevention Expenditures to Advertising, Marketing and

13 Promotional Expenditures, 1983 to 1994;" right?

14 A. Yes.

15 Q. And this is a graph which compares the amount

16 that Lorillard spent for advertising, marketing and

17 promotional expenditures for its cigarettes versus

18 what it spent to try and keep youth from smoking;

19 right?

20 A. Yes.

21 Q. And the total amount that was spent for

22 advertising and marketing and promotion of

23 Lorillard's cigarettes is shown in green; right?

24 A. Yes.

25 Q. And the total amount that was spent by the

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1 companies -- by Lorillard to prevent youth from
2 smoking is a straight line; isn't it, sir?

3 A. Yes.

4 Q. Could you turn to the last tabbed page.

5 This is a graph entitled "Youth Prevention
6 Expenditures to Advertising, Marketing and
7 Promotional Expenditures, 1954 to 1994;" right?

8 A. Yes.

9 Q. It's for the Lorillard Company?

10 A. Yes.

11 Q. And the advertising, marketing and promotional
12 expenditures in this graph are shown in green; right?

13 A. Yes.

14 Q. And compared with that, the youth prevention
15 expenditures are a straight line; right?

16 A. Yes.

17 Q. Now sir, keeping in mind these various graphs,
18 let me ask you: Do you believe that the tobacco --
19 or I'm sorry. Strike that.

20 Keeping in mind these various graphs, sir, do
21 you believe that the cigarette manufacturers who make
22 up The Tobacco Institute did everything in their
23 power to ensure that youths did not smoke?

24 MR. LAYDEN: Objection.

25 MR. FLYNN: There's really no foundation

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1 for this.

2 A. I have no -- no basis to comment. I just know
3 what The Tobacco Institute's done, which I said has
4 been by my standards a major investment.

5 Q. What do you mean by "major," sir?

6 A. It's been a major program, not only taking up
7 dollar amounts for youth program, but also just in
8 terms of my personnel time.

9 Q. Well how much money was spent by The Tobacco
10 Institute on youth prevention expenditures?

11 A. Last year I think it was pretty close to 10
12 million dollars for the We Card program.

13 Are you -- are you familiar with the We Card
14 program?

15 Q. Well what --

16 Why don't you explain to us what the We Card
17 program is.

18 A. It's a program of outreach to all of the
19 retailers throughout the United States, training
20 programs for the clerks in the stores, convenience
21 stores, grocery stores, to make them aware that they
22 should not be selling their product to anyone under
23 the legal age, and then that's supplemented with card
24 programs through the store, placards, different
25 information to keep this paramount in their mind, and

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1 also the school customers -- for the customers that
2 come in.

3 Q. Sir, do you know if the tobacco manufacturers
4 include the amount that they contribute to The
5 Tobacco Institute for its youth prevention programs
6 as part of the money that was depicted in these
7 graphs?

8 MR. LAYDEN: Objection, foundation.

9 A. Well no, I -- I do not.

10 Q. Sir, when you became president of The Tobacco
11 Institute back in 1981, did you learn that -- how
12 important young smokers were to the cigarette
13 industry in the United States?

14 MR. FLYNN: Objection, it's argumentative,
15 assumes a state of facts he hasn't admitted. But --

16 A. Did --

17 No, I did not learn of it. At that time it was
18 a program that I thought the cigarette manufacturers
19 ought to be involved in based upon my experience with
20 another trade association where I got -- tried to get
21 them involved in alcohol education so far as
22 consumption of alcoholic beverages by -- by minors,
23 which was a successful program.

24 Q. Well sir, did --

25 When you became president of The Tobacco

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1 Institute, did you learn that if a person was still a
2 non-smoker at age 20, he was -- he or she was
3 unlikely to take up the habit after that?

4 A. I didn't learn that. I find that hard to
5 believe. As I said, I told you I started smoking in
6 my late thirties. I don't know when people start
7 smoking.

8 MR. FLYNN: The answer is you didn't learn
9 that?

10 THE WITNESS: No, did not learn that.
11 (Plaintiffs' Exhibit 755 was marked
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as
15 Plaintiffs' Exhibit 755, this is a document that
16 begins with the Bates number 680096095; right?

17 A. Yes, ma'am.

18 MR. FLYNN: It's also a B&W document.

19 Q. It's entitled "SECONDARY SOURCE DIGEST;" right?

20 A. Yes.

21 Q. All right. Now sir, would you take a few
22 moments and read to yourself the section entitled
23 "MARKET PLANNING APPROACH," and then also the
24 section on the page that ends with Bates number 099
25 entitled "RESEARCH RESULTS, Smoking by Children and

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1 Adults."

2 A. All right. You mean --

3 Is your copy like mine, it's sort of hard to

4 read? Is that right?

5 Q. My copy is like yours.

6 A. Is it?

7 Q. And I would be more than happy to give you my

8 highlighted copy.

9 A. I'm having trouble reading this.

10 Q. That's fine.

11 A. Okay.

12 MS. WIVELL: Why don't we go off the record

13 then.

14 MR. FLYNN: Keep it on the record, because

15 when we go off --

16 MS. WIVELL: That's fine. That's fine.

17 A. Should have brought my glasses here.

18 Ms. Wivell, you want me to read, then, over to

19 the next page; right, too?

20 Q. Actually why don't you turn to the page that

21 ends with 099 --

22 A. 099.

23 Q. -- and is entitled "RESEARCH RESULTS, Smoking by

24 Children and Adults."

25 A. 099.

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1 Okay, I've read it.

2 Q. All right. Now according to the introduction to
3 this document, it was put together in order to
4 address the subject of the psychological and
5 physiological aspects of smoking; right?

6 A. I don't see that. Where do you see that?

7 Q. Well under "MARKET -- MARKETING PLANNING
8 APPROACH," doesn't it say, "Key articles and reports
9 were furnished by R&D on the subject of the
10 psychological and physiological aspects of smoking --
11 smoking. Marketing Planning edited these documents
12 and -- and assembled excerpts from them to help
13 answer questions about future incidence and
14 consumption?"

15 A. That's what this document says.

16 Q. All right. And this document, if we go to the
17 page that ends with 099, gives us some information on
18 youth smoking; doesn't it?

19 MR. FLYNN: It's self-evident. It says
20 what it says. Whether it's accurate or not --

21 A. That's -- that's what this document says.

22 Q. It says, according to the survey, if a youngster
23 were still a non-smoker at 20, he would be unlikely
24 to take up the habit; right?

25 A. I don't see that. It says --

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- 1 Q. I'm looking --
- 2 A. It says "Those who start to smoke" -- is that
- 3 where you're talking about?
- 4 Q. Well I'm actually --
- 5 A. You're paraphrasing?
- 6 Q. No. Would you look at the end of the second
- 7 paragraph there, sir. There it says, "Conversely,
- 8 according to the survey, if a youngster were still a
- 9 non-smoker at twenty, he would be unlikely to take up
- 10 the habit." Right?
- 11 A. That's what the document says.
- 12 Q. And then in the first paragraph it talks about
- 13 youngsters who start to smoke at comparatively early
- 14 ages, at 10 or 11 years; right?
- 15 MR. FLYNN: Wait. No, that's not --
- 16 Read the document. That's not what it says at
- 17 all. It says they go through a period of
- 18 experimenting with cigarettes, those who start at 10
- 19 to 12. Don't --
- 20 You didn't read it right, counsel. Just read to
- 21 it him. He can affirm it and we can move on. Or
- 22 read it back to her. Read the sentence.
- 23 A. "Those who start" --
- 24 Q. Well let me rephrase the question.
- 25 A. Okay.

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1 Q. In the first paragraph it refers to smokers who
2 start smoking at a comparatively early age of 10 or
3 12 years; right?

4 MR. FLYNN: Well --

5 A. "Those who start to smoke at a comparatively" --

6 MR. FLYNN: Read the sentence.

7 A. -- "early age, at ten or twelve years," that's
8 what it says.

9 Q. And then it says they go through a long period
10 of experimenting with cigarettes before taking up
11 smoking seriously; right?

12 A. Yes, that's what the document says.

13 Q. Now sir, when you became president of The
14 Tobacco Institute, did you understand that it was
15 important for the tobacco industry to know as much as
16 possible about youth smoking patterns and attitudes?

17 A. It was never discussed. It was something that
18 we had no concern with.

19 Q. Sir, showing you what's been marked previously
20 as Plaintiffs' Exhibit 358 --

21 A. Would you like this --

22 Q. Thank you.

23 A. -- back? And I'll bring that other one over
24 here. Okay, thank you.

25 Q. This is a document --

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1 A. Oh, is this --

2 Are we through with this?

3 Q. Yes, sir.

4 A. Okay.

5 Q. Exhibit 358 is a document entitled "PHILIP
6 MORRIS U.S.A. RESEARCH CENTER," and the report title
7 is "Young Smokers, Prevalence, Trend, Implications
8 and Related Demographic Trends."

9 MR. FLYNN: Dated March '91 -- March '81.

10 A. Yes.

11 Q. For the record, the document begins with the
12 Bates number 1003636640; right?

13 A. Yes.

14 Q. Would you take a moment and review the page that
15 ends with the Bates number 642.

16 A. 642.

17 THE WITNESS: What year is this one?

18 MR. FLYNN: This is '81.

19 THE WITNESS: Where do you see that?

20 A. Yes, ma'am.

21 Q. All right. Why don't you just take a moment and
22 read that summary page to yourself.

23 A. Yes, ma'am, I've read it.

24 Q. Now sir, it says at the beginning of this
25 summary page, "It is important to know as much as

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1 possible about teenage smoking patterns and
2 attitudes. Today's teenager is tomorrow's potential
3 regular customer, and the overwhelming majority of
4 smokers first begin to smoke while still in their
5 teens." Did I read that correctly?

6 A. Yes, ma'am.

7 Q. Well sir, let me ask you this: When you became
8 president of The Tobacco Institute, did you know that
9 Philip Morris was concerned about teenage smoking
10 patterns and attitudes?

11 A. No.

12 Q. Did you learn at any time that Philip Morris's
13 view was today -- today's teenager is tomorrow's
14 potential regular customer?

15 A. No.

16 Q. Did you at any time learn that the overwhelming
17 majority of smokers first begin to smoke while still
18 in their teens, as it says here in Exhibit --

19 MS. WIVELL: What is the exhibit number?
20 I'm sorry.

21 MR. FLYNN: 358.

22 MS. WIVELL: 358. Let me repeat the
23 question.

24 Q. Did you at any time learn that the overwhelming
25 majority of smokers first begin to smoke while still

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1 in their teens, as it says here in Exhibit 358?

2 A. No.

3 Q. So this information was just never shared with
4 you at any time when you were -- have been involved
5 with The Tobacco Institute?

6 A. That's correct.

7 Q. Now sir, it goes on to say, "In addition, the
8 ten years following the teenage years is the period
9 during which average daily consumption per smoker
10 increases to the average adult level;" right?

11 A. You're talking about the third paragraph now?

12 Q. No, sir.

13 MR. FLYNN: She's -- just the next
14 sentence.

15 THE WITNESS: Oh, the second sentence.

16 MR. FLYNN: She read it already.

17 Q. And that sentence says -- let me begin again.

18 A. Yes.

19 Q. The next sentences says, "In addition, the ten
20 years following the teenage years is the period
21 during which average daily consumption per smoker
22 increases to the average adult level."

23 A. Yes.

24 Q. Is that information you've been aware of while
25 you were involved with The Tobacco Institute?

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1 A. No.

2 Q. Goes on to say in the beginning of the second
3 paragraph, "Furthermore, it is during the teenage
4 years that the initial brand choice is made. At
5 least a part of the success of Marlboro Red during
6 its most rapid growth period was made because" --

7 MR. FLYNN: You added a word.

8 Q. "...was because it became the brand of choice
9 among teenagers who then stuck with it as they grew
10 older...;" right?

11 A. That's what the -- the document says.

12 Q. Then it goes on to say, "this combined with the
13 rapid growth in the absolute number of teenagers;"
14 right?

15 A. Yes.

16 Q. Sir, while you have been involved with The
17 Tobacco Institute, were you aware that Philip Morris
18 thought that the success of Marlboro Red was due in
19 large part because it became the brand of choice
20 among teenagers?

21 A. No.

22 Q. Now sir, the next paragraph talks about the
23 average daily consumption of young smokers
24 increasing; doesn't it, sir?

25 MR. FLYNN: Again it speaks for itself,

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1 but --

2 A. That's -- that's what this document says, yes.

3 Q. And it says specifically, "Average daily
4 consumption of these young smokers also increased, so
5 that between 1968 and 1974 the number of 12- to
6 18-year-olds who smoked ten or more cigarettes per
7 day more than doubled;" right?

8 A. Yes, that's what the document says.

9 Q. Sir, did you --

10 Were you aware of this information that Philip
11 Morris knew that the average daily consumption of
12 young smokers increased during that period 1968 to
13 1974?

14 MR. LAYDEN: Objection, foundation.

15 MR. FLYNN: Yeah.

16 A. No.

17 Q. Now sir, were you aware that there was concern
18 at Philip Morris about being able to replace -- I'm
19 sorry, strike that.

20 Isn't it true that Philip Morris looked at the
21 pool of teenagers as -- as a replacement pool for
22 smokers who were lost through normal attrition?

23 MR. LAYDEN: Objection, foundation.

24 MR. FLYNN: This is just --

25 Forget the document. Just if you know the

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1 answer to that question.

2 A. Would you repeat the question, please?

3 Q. Yes, sir.

4 Were you aware or have you become aware that
5 there was a concern at Philip Morris about looking at
6 the pool of teenagers as a replacement pool of
7 smokers who were lost through normal attrition?

8 MR. LAYDEN: Objection, foundation, vague.

9 A. I was aware that Philip Morris was concerned
10 about youth smoking at our meetings and wanted us to
11 try and develop programs to do something about
12 under-age smoking.

13 Q. Well sir, I'm not sure that that answers my
14 question. And I appreciate your answer. But isn't
15 it true that Philip Morris looked at teenagers as a
16 pool with which to replace smokers who were lost
17 because they quit or died?

18 MR. LAYDEN: Objection.

19 A. I never had any knowledge of Philip Morris doing
20 that.

21 Q. So if they had that opinion, they never shared
22 it with you; right?

23 A. That's right.

24 Q. Would you turn to the next page of Exhibit 358.

25 A. 358.

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1 MR. FLYNN: Just the next page. This --
2 there we go.

3 THE WITNESS: Oh.

4 MR. FLYNN: You want him to read --
5 You haven't had him read that.

6 Q. Sir, the last sentence of the first paragraph
7 says, "We will no longer be able to rely on a rapidly
8 increasing pool of teenagers from which to replace
9 smokers lost through normal attrition." Right?

10 A. That's what the document says.

11 Q. Sir, and the folks at Philip Morris had never
12 shared that information with you the entire time
13 you've been involved with The Tobacco Institute?

14 A. No, ma'am.

15 Q. Now sir, could you turn to the last paragraph
16 and read it to yourself on that page.

17 A. I've read it.

18 Q. Now sir, if we -- I'm sorry, strike that.

19 It says there, "Because of our high share of
20 market among the youngest smokers, Philip Morris will
21 suffer more than the other companies from the decline
22 in the number of teenage smokers;" right?

23 A. That's what it says.

24 Q. Did you ever hear any of the tobacco companies
25 with which you were involved complain that they were

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1 going to suffer with the decline of the number of
2 teenage smokers?

3 A. No.

4 Q. Sir, if you turn to the next page, we see Philip
5 Morris has collected information on the percent of
6 current regular smokers by age; right?

7 A. Yes.

8 Q. And they have collected information showing that
9 in the period 1969 -- or '68 through 1974, they were
10 collecting information on smokers aged 12 to 14;
11 right?

12 MR. LAYDEN: Objection, mischaracterizes
13 the document.

14 A. What it says comes from studies conducted by the
15 Chilton Research Services for the National
16 Clearinghouse on Smoking and Health. Is that the
17 question?

18 Q. Well sir, let me try and rephrase it.

19 Table 1 presents information on the percentage
20 of current regular smokers in the age group 12 to 14;
21 doesn't it?

22 A. Yes.

23 Q. And a current regular smoker is defined below
24 the table as someone who smoked one or more
25 cigarettes per week; right?

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1 A. Yes.

2 Q. Now sir, isn't it true that not only Philip
3 Morris but also other members of The Tobacco
4 Institute were concerned about teenage smokers drying
5 up as a source of new smokers to replace old
6 smokers?

7 MR. FLYNN: Wait. I object -- I object to
8 the question as dual and argumentative. To answer
9 the question, he's got to affirm the statement you
10 made, which he's been denying. So I ask you to
11 separate the question and forget the statement.

12 Q. Well sir, are you aware that other members of
13 The Tobacco Institute were concerned that the pool of
14 teenage smokers was drying up?

15 A. No, I was not aware.

16 Q. Never heard a concern that the loss of youth
17 smokers was important to any of the member companies
18 because it provided a source of new smokers to
19 replace old smokers?

20 A. No, ma'am.

21 (Discussion off the stenographic record.)

22 (Plaintiffs' Exhibit 756 was marked
23 for identification.)

24 Q. Sir, showing you what's been marked as
25 Plaintiffs' Exhibit 756, this is a confidential

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1 document dated October 6, 1982; right?

2 A. Yes.

3 Q. And it's to L. W. Hall from D. S. Burrows;

4 right?

5 A. Yes.

6 Q. The subject is "NBER MODELS OF PRICE SENSITIVITY

7 BY AGE/SEX."

8 A. Yes.

9 Q. This document was written after you became

10 president of The Tobacco Institute; right?

11 A. Yes.

12 Q. Was the previous document also written after you

13 became president of The Tobacco Institute?

14 MR. FLYNN: March of '81.

15 A. What -- what was the date of the other document?

16 Q. March 31st, 1981, sir.

17 A. No, I wasn't at The Tobacco Institute until -- I

18 think it was May.

19 Q. All right. Well turning your attention back to

20 Plaintiffs' Exhibit 756, for the record, this is a

21 document that begins with the Bates number 501988810;

22 right?

23 A. Yes.

24 Q. Would you turn to the second page and read to

25 yourself the conclusion section, sir.

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1 A. I have read the document.

2 Q. There it says in the second paragraph, "But, the
3 loss of younger adult sales and teenagers" --

4 MR. FLYNN: "Adult males."

5 MS. WIVELL: I'm sorry.

6 Q. There it says, "But, the loss of younger adult
7 males and teenagers is more important to the long
8 term, drying up the supply of new smokers to replace
9 the old." Right?

10 A. Yes.

11 Q. And you never heard anyone from R. J. Reynolds
12 express a concern that the loss of teenage smokers
13 would mean that a new source of smokers was drying
14 up?

15 A. No, I never did.

16 MR. FLYNN: She's done with that.

17 THE WITNESS: Is this --

18 Q. Well sir, did you ever hear anyone from any of
19 the tobacco company members of The Tobacco Institute
20 express the view that the age -- 14-to-24 age group
21 represented tomorrow's cigarette business?

22 A. No.

23 Q. Sir, showing you what's been previously marked
24 as Plaintiffs' Exhibit 1035, this is a document with
25 a handwritten note on the front, "Mr. C. A. Tucker,

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1 Present -- Presentation to RJRI B of D, 9/30/74

2 Marketing Plans;" right?

3 A. Yes.

4 Q. For the record, the Bates number begins

5 501421310; right?

6 A. Yes.

7 Q. Why don't you take a few minutes and review the

8 document.

9 MR. FLYNN: Just skim the rest of it.

10 THE WITNESS: Gosh, you're a fast reader.

11 MR. FLYNN: Just skim it. I don't think

12 she wants you to read each page.

13 MS. WIVELL: Well I want you to be

14 comfortable you know what this document is about,

15 sir, but I will tell you that most of my questions

16 will come from the first few pages.

17 THE WITNESS: Okay. Thank you.

18 Q. You've had the opportunity to look at the

19 document, sir?

20 A. Yes, ma'am.

21 Q. This is a 1975 marketing plan presentation;

22 isn't it?

23 MR. LAYDEN: Objection.

24 A. Yes.

25 MR. LAYDEN: Foundation.

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1 Q. And it sets forth on the third page of the
2 document objectives for the 1975 year for R. J.
3 Reynolds; right?

4 MR. FLYNN: What page are you on?

5 MS. WIVELL: The third page of the
6 document.

7 MR. FLYNN: 312?

8 MS. WIVELL: No, 311. I'm sorry, the
9 second page of the document. Let me rephrase the
10 question.

11 Q. On the second page of the document it sets forth
12 marketing objectives for 1975 for R. J. Reynolds;
13 right?

14 A. Yes, ma'am.

15 Q. And the paramount objective was to re-establish
16 RJR's share of the marketing growth in the domestic
17 cigarette industry; right?

18 A. According to this document it was.

19 Q. And according to this document, the -- there
20 were four key opportunity areas that R. J. Reynolds
21 was intending to use to accomplish that goal; right?

22 A. The four referred to in the document, yes.

23 Q. And the first one that's referred to is -- is,
24 quote, "INCREASE OUR YOUNG ADULT FRANCHISE;" right?

25 A. Yes.

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1 Q. Now sir, the young adult market is defined in
2 the paragraph immediately before the four points;
3 isn't it?

4 MR. FLYNN: Do you see where --
5 Do you see where she's referring?

6 THE WITNESS: No, I don't see what she's
7 talking about. Where is this?
8 Okay.

9 Q. Well sir, do you see where it says, "IN 1960,
10 THIS YOUNG ADULT" -- strike that.

11 Do you see where it says, "FIRST, LET'S LOOK AT
12 THE GROWING IMPORTANCE OF THE YOUNG ADULT IN THE
13 CIGARETTE MARKET?"

14 A. Yes.

15 Q. And then doesn't it define the young adult
16 market as the 14-to-24 age group?

17 A. Yes.

18 MR. FLYNN: I object. I don't know if
19 that's a definition. It says what it says, but --

20 Q. The document goes on to say, concerning this
21 14-to-24-year age group, that they represent
22 tomorrow's cigarette business; right?

23 A. It says represents 21 percent of the population.

24 Q. And it goes on to say in the next paragraph,
25 "THEY REPRESENT TOMORROW'S CIGARETTE BUSINESS;"

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1 right?

2 A. That's what the document says.

3 Q. And it also says that "AS THIS 14-TO-24 AGE
4 GROUP MATURES, THEY WILL ACCOUNT FOR A KEY SHARE OF
5 THE TOTAL CIGARETTE VOLUME -- FOR AT LEAST THE NEXT
6 25 YEARS;" right?

7 A. That's what the document says.

8 Q. Now the next page talks about the strength that
9 the Philip Morris and Brown & Williamson product have
10 had with young smokers; right?

11 A. Yes.

12 Q. And it says in the 24 to -- I'm sorry, strike
13 that.

14 And it says "IN THE 14-TO-24 AGE CATEGORY,
15 PHILIP MORRIS HAS A 38 SHARE AND B&W A 21 SHARE;"
16 right?

17 A. That's what the document says.

18 Q. Now by 38 percent share and 21 percent share,
19 we're talking about market share of total domestic
20 sales; right?

21 MR. FLYNN: Objection. If you know that.
22 I don't know. It says that, but the document speaks
23 for itself.

24 A. I don't -- I don't know. I don't see domestic.
25 But anyway, I don't know what it refers to.

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- 1 Q. If we look down toward the bottom of the
2 page, --
- 3 A. I see.
- 4 Q. -- there's reference to Winston and Salem and
5 how they compare in the 14-to-24-year age group with
6 Marlboro and Kool; right?
- 7 A. It says "COMPARATIVE WEAKNESSES," is that what
8 you mean, "AGAINST MARLBORO AND KOOL AMONG THESE" --
9 is that where you're referring to?
- 10 Q. Yes, sir.
- 11 A. Yes, that's what the document says.
- 12 Q. And in fact, so the record's clear, Marlboro is
13 the Philip Morris product; right?
- 14 A. Yes.
- 15 Q. Kool is the Brown & Williamson product.
- 16 A. Yes.
- 17 Q. And Winston, compared to those products, was at
18 14 percent of the 14- to 24-year-old age group,
19 versus Marlboro at 33 percent; right?
- 20 A. That's what the document says.
- 21 Q. And at the bottom of the page it says, "THIS
22 SUGGESTS SLOW MARKET SHARE EROSION FOR US IN THE
23 YEARS TO COME UNLESS THE SITUATION IS CORRECTED."
24 Right?
- 25 A. Yes, that's what the document says.

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1 Q. And sir, didn't RJR go on to enunciate a
2 strategy of targeting marketing directly to young
3 smokers in order to correct that problem?

4 MR. FLYNN: You're asking him to read the
5 document.

6 A. I -- I don't know what RJR did.

7 Q. All right.

8 A. I have no way of knowing.

9 Q. Could you turn to the next page. There it says,
10 "THUS, OUR STRATEGY BECOMES CLEAR FOR OUR
11 ESTABLISHED BRANDS:

12 "DIRECT ADVERTISING APPEAL TO THE YOUNGER
13 SMOKERS WHILE," and then it goes on; right?

14 A. That's what the document says.

15 Q. Well sir, isn't it true that the Camel
16 advertising strategy involving Joe Camel was targeted
17 to do exactly that, directly appeal to young
18 smokers?

19 MR. FLYNN: Objection.

20 MR. LAYDEN: Objection.

21 MR. FLYNN: There's no foundation he has
22 any knowledge of any of that.

23 A. I don't --

24 Madam, I don't know what their strategy was. I
25 don't know what they were doing.

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- 1 Q. All right. Well would you turn to the page that
2 ends with Bates number 314.
- 3 A. 314. Okay.
- 4 Q. Where it says "CHART 10." Do you see that, sir?
- 5 A. "CHART 10." Right.
- 6 Q. It says, "FURTHER YOUNG ADULT EMPHASIS IS BEING
7 PLACED THROUGH THE SUCCESSFUL SALEM BOX, quote,
8 DENIM, quote, CAMPAIGN;" right?
- 9 A. That's what the document says.
- 10 Q. Now sir, on the next page there is reference to
11 the Meet the Turk advertising campaign; right?
- 12 A. Next page.
- 13 Yes, I see that in the document.
- 14 Q. All right, sir. And do --
- 15 Did you understand that the Meet the Turk
16 campaign was devoted to young male smokers?
- 17 A. As I said before, I don't know anything about
18 these documents. I'm not involved in marketing the
19 brand. It's not the function of The Tobacco
20 Institute. I have no knowledge of this at all.
- 21 Q. Well sir, so you don't have any knowledge about
22 the purpose of the Young Turk advertising -- or I'm
23 sorry, the Meet the Turk advertising campaign; right?
- 24 A. No, ma'am.
- 25 Q. Now sir, isn't it true that this document also

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1 talks about increasing media efforts directed toward
2 young adult smokers?

3 MR. FLYNN: Do you want to focus him on
4 where it is?

5 A. I didn't pick that up. Is there a reference
6 page you want me to look at?

7 Q. Sir, could you turn to the page Bates number --
8 or that ends with Bates number 316.

9 A. 316. Okay. Where would you like me to look?

10 Q. Where it says "CHART 14, MEDIA."

11 A. "CHART 14, MEDIA."

12 Q. There it says, "WE HAVE ALSO INCREASED OUR MEDIA
13 EFFORTS TOWARD YOUNG ADULTS FOR OUR BRANDS;" right?

14 A. Yes, that's what the document says.

15 Q. It talks about --

16 It talks about placing advertising in
17 traditional young adult magazines like Sports
18 Illustrated, Playboy and Ms.; right?

19 A. That's what the document says.

20 Q. And sir, it also talked about placing
21 advertising in Road & Track and Motorcycling
22 magazines; right?

23 A. You're referring to adult special interest
24 magazines like Road & Track and Motorcycling?

25 Q. Yes. And it refers to placing advertising

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1 there; doesn't it?

2 A. Yes.

3 Q. And it also refers to expanded outdoor
4 advertising in locations with maximum young adults
5 exposure; right?

6 A. Well --

7 MR. FLYNN: Read the rest of it.

8 A. "...POSTERS IN GREENWICH VILLAGE IN AREAS WITH
9 LARGE COLLEGE STUDENT POPULATIONS.

10 Q. Well sir, did -- were you aware -- I'm sorry,
11 strike that.

12 Since you became president of The Tobacco
13 Institute, have you become aware of this marketing
14 focus as described in -- in Exhibit 1035?

15 A. No.

16 Q. No one from R. J. Reynolds ever shared this
17 information with you as president of The Tobacco
18 Institute?

19 A. No.

20 Q. Well sir, did anyone from R. J. Reynolds ever
21 tell you that one of the reasons that it was engaging
22 in this advertising campaign was to ensure increased
23 and longer-term growth penetration among the 14- to
24 24-year-old age group?

25 A. No.

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1 THE REPORTER: We have to change tape. Off
2 the record, please.

3 (Discussion off the record.)

4 BY MS. WIVELL:

5 Q. Sir, did you ever learn that R. J. Reynolds
6 wanted to increase rather than decrease its share of
7 smokers in the 14- to 24-year-old age group?

8 MR. FLYNN: I object as compound, but --

9 A. No, the Executive Committee and --
10 The Executive Committee members of RJR just
11 always articulated their stated policy that they were
12 against youth smoking.

13 Q. Sir, showing you what's previously been marked
14 in this litigation as Plaintiffs' Exhibit 1037, --

15 A. This is mine.

16 Q. -- this is a document that bears the Bates
17 number 505775557; right?

18 A. Yes.

19 Q. And it's stamped at the top "RJR SECRET;" right?

20 A. Yes.

21 MR. FLYNN: Dated January --

22 Q. The date is January 23rd, 1975; right?

23 A. Yes.

24 Q. This is a memo to Mr. C. A. Tucker from J. F.

25 Hind; right?

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1 A. Yes.

2 Q. Why don't you take a moment and read it to
3 yourself.

4 A. I've read the document.

5 Q. Sir, in this document there's reference to the
6 Meet the Turk campaign that we saw referred to in the
7 last exhibit; right?

8 A. Yes.

9 Q. And it says that the Meet the Turk campaign was
10 another step to meet our marketing objective; right?

11 MR. FLYNN: Again it speaks for itself.

12 A. That's what the document says.

13 Q. And that marketing objective is listed as,
14 quote, "To ensure increased and longer-term growth
15 for CAMEL FILTER, the brand must increase its share
16 penetration among the 14-24 age group which have a
17 new set of more liberal values and which represent
18 tomorrow's cigarette business." Right?

19 A. That is what the document says.

20 Q. And no one from RJR ever told you that, as this
21 document says, they were trying to increase their
22 market share penetration among the 14- to 24-year-old
23 age group?

24 A. No, they did not.

25 Q. Now it goes on in the next paragraph to talk

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1 about "While the 'Meet the Turk' campaign is designed
2 to shift the brand's age profile to the younger age
3 group, this won't come over night." So no one ever
4 shared that information with you either?

5 A. That's correct.

6 Q. Sir, looking at these last couple of documents
7 here and keeping in mind your former testimony about
8 what was said by RJR at the Executive Committee
9 meetings, does it appear to you that RJR was speaking
10 out of both sides of its mouth --

11 MR. FLYNN: Objection.

12 Q. -- when it came to the issue of youth smoking?

13 MR. FLYNN: Objection. He has no basis for
14 making those judgments and conclusions. There's no
15 foundation for him to talk about documents that he's
16 never seen, has no understanding of the context of.

17 MR. LAYDEN: Objection, argumentative.

18 A. As -- as I --

19 Repeat the question, will you, please?

20 Q. Yes, sir.

21 Assuming that the statements that we've looked
22 at concerning R. J. Reynolds' objective of increasing
23 brand penetration among the 14- to 24-year-old age
24 group are true, and keeping in mind your testimony
25 about what they have told you at the Executive

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1 Committee meetings, does it appear to you that R. J.
2 Reynolds is speaking out of both sides of its mouth
3 when it comes to the youth prevention issue?

4 MR. FLYNN: Same objections.

5 MR. LAYDEN: Same objections.

6 MR. FLYNN: No basis.

7 A. RJ -- RJR's stated policy to me relative to
8 youth smoking is that they're concerned about it. I
9 have no way of knowing what they might have said
10 internally or what one person's feeling might have
11 been within the company as reflected by this memo.
12 You know, it's just one person's thought it would
13 appear to me.

14 Q. Well sir, if indeed it was the policy of R. J.
15 Reynolds at this time period to try and increase
16 rather than decrease smoking among 14-year-olds, for
17 example, in your opinion, sir, would the company be
18 speaking out of both sides of its mouth?

19 MR. LAYDEN: Objection.

20 MR. FLYNN: Same objection.

21 A. I can only --

22 Of course this goes back before my time, but I
23 can only tell you again that what their stated policy
24 is with me, and that is that they have been and are
25 concerned about youth smoking and wanted to do

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1 something about it.

2 Q. Well sir, if the statements made in this exhibit
3 and the -- the last one we looked at are true,
4 they're saying one thing internally and one thing to
5 you; isn't that -- and a different thing to you;
6 right?

7 MR. FLYNN: Objection. It's just
8 argumentative. It's without foundation.

9 A. I would have to make a lot of assumptions based
10 upon what was happening back then and who had made
11 what statements, so I really can't -- I don't have
12 any opinion.

13 Q. Well sir, do the statements that we've seen in
14 Exhibit 1037 and Exhibit 1035 shock you?

15 A. I think --

16 MR. LAYDEN: Objection, vague.

17 A. I -- I don't know if it shocks me or not. I
18 just think it's a matter of one person making a
19 statement or one person writing a memo. I don't know
20 what the basis was for the memo or what --
21 necessarily what research or anything else. I'm just
22 not familiar with it. It's just not my area. It's
23 not anything that we've ever been involved in.

24 Q. Well sir, you have been involved with The
25 Tobacco Institute's public pronouncements on youth

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1 smoking; haven't you?

2 A. Yes, we have.

3 Q. Sir, have you seen the testimony that's been

4 given in this case about Exhibit 1035 and 1037 by Mr.

5 Nordine?

6 A. No, ma'am, I have not.

7 Q. No one's ever shared with you the testimony he

8 gave about these exhibits.

9 A. No.

10 Which exhibits now?

11 Q. Exhibits 1035 and 1037.

12 A. Ten --

13 You mean this one I'm looking at right now?

14 Q. Yes, sir.

15 A. No, I've never seen this document before. And

16 the other one was -- was this one I guess? Is that

17 it?

18 Q. Yes, sir. Now --

19 A. I've never seen -- never seen either of these

20 documents before.

21 Q. All right. And no one has ever shared the

22 information that we've just discussed that was

23 included in these documents with you; right?

24 A. No, ma'am.

25 Q. Let's take a look and what's been marked as

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1 Plaintiffs' Exhibit 1121. This is a document that
2 bears the Bates number 508453894; right?

3 A. Yes, ma'am.

4 Q. This is an RJR document dated July 22nd, 1980?

5 A. Yes, ma'am.

6 Q. Would you read it to yourself.

7 A. I've read your document.

8 Q. Now in the first paragraph the document -- I'm
9 sorry, strike that.

10 In the first paragraph the document writer talks
11 about the Philip Morris market share increasing among
12 14- to 17-year-old smokers, right?

13 A. That's correct.

14 Q. And there was a concern expressed in this
15 document about that increase; right?

16 MR. FLYNN: Speaks for itself.

17 MR. LAYDEN: Mischaracterization.

18 MR. FLYNN: If you want to read a portion
19 of this document --

20 A. It says, "Importantly, the report further
21 indicates that RJR continues to gradually
22 decline....".

23 Q. And then it says, "Hopefully, our various
24 planned activities that will be implemented this fall
25 will aid in some way in reducing or correcting these

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1 trends;" right?

2 A. That's correct, that's what the document says.

3 Q. Now sir, did anyone from R. J. Reynolds ever

4 share with you the fact that the company had

5 implemented activities to try and increase its market

6 share among 14- to 17-year-olds?

7 A. No.

8 Q. Nobody ever -- ever told you that information;

9 right?

10 A. No, they did not.

11 Q. Well did anyone ever tell you that R. J.

12 Reynolds had developed a youth appeal brand?

13 A. No.

14 Q. Sir, showing you what's been marked previously

15 as Plaintiffs' Exhibit 1061, this is a document that

16 is dated December 4th, 1973; right?

17 A. Yes, ma'am.

18 Q. And the subject of the memo is "CIGARETTE

19 CONCEPT TO ASSURE RJR A LARGER SEGMENT OF THE YOUTH

20 MARKET." Right?

21 A. Yes.

22 Q. Why don't you take a minute and review the

23 document, sir.

24 MR. CARPENTER: Counsel, could you read the

25 Bates number of that document?

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1 MS. WIVELL: Certainly. For the record
2 it's 501166152. I apologize for not doing that
3 earlier.

4 A. I've read the document.

5 Q. Now sir, according to this document it was
6 suggested that RJR develop a youth appeal brand of
7 cigarettes; right?

8 A. That's what the document says.

9 Q. In other words, from reading it you understand
10 that there was a concern or a -- an attempt to try
11 and develop a cigarette which would appeal to young
12 smokers.

13 MR. FLYNN: Again it speaks for itself. If
14 you have any knowledge about it beyond that, you can
15 tell her.

16 A. That's what the document refers to.

17 Q. And one of the ways that this would be done was
18 through technology; right?

19 MR. FLYNN: Again it speaks for itself.

20 A. I don't know. That's what the document says
21 here.

22 Q. All right. And it talks about going back to the
23 cigarettes of the '50s; right?

24 A. It says "it would be impossible to go back...to
25 the '55 type cigarette." Is that --

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1 Instead of going back to it, it says -- the last
2 paragraph, first page?

3 Q. Well sir, doesn't it say in the summary, "It is
4 suggested to develop a new RJR youth-appeal brand
5 based on the concept of going back - at least
6 halfway - to the technological design of the WINSTON
7 and other filter cigarettes of the 1950's?"

8 A. Is that on the last page?

9 Q. No.

10 MR. FLYNN: She just read the first
11 paragraph.

12 THE WITNESS: Oh.

13 Q. That's the first paragraph; isn't it, sir?

14 A. First paragraph.

15 Yes, that's what the document says.

16 Q. And according to the author, the cigarettes from
17 the '50s had three main distinguishing
18 characteristics from the cigarettes of -- of -- at
19 the time the document was written.

20 A. Yes, that's what the document says.

21 Q. And one of those distinguishing characteristics
22 was that the older-type cigarettes developed more
23 enjoyment or kicks, according to the author; right?

24 MR. FLYNN: Delivered, not developed.
25 Delivered more enjoyment.

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1 Q. I'm sorry, let me rephrase the question.

2 And one of those distinguishing characteristics
3 was that the older-type cigarettes delivered more
4 enjoyment or kicks; right?

5 A. I don't see where that language is.

6 MR. FLYNN: Right there.

7 THE WITNESS: Oh, it's up here.

8 A. I see, okay.

9 Q. And it says --

10 A. That's what the document says.

11 Q. -- afterwards, or after the word "kicks" in
12 quotes, it says "(nicotine);" right?

13 A. That's what the document says.

14 Q. And the author suggested that it was possible to
15 achieve the -- to achieve a youth-oriented cigarette
16 that would develop more nicotine kick through pH
17 regulation; right?

18 MR. FLYNN: Again it speaks for itself. If
19 you got something to focus him on --

20 pH --

21 Q. Can you turn to the last paragraph -- or the
22 last sentence on the page.

23 A. That's what the document says.

24 Q. In other words, the author suggested it was
25 possible to achieve a youth-oriented cigarette that

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1 would develop more nicotine kick through pH
2 regulation; right?

3 MR. FLYNN: I think you're paraphrasing
4 that now.

5 A. That isn't what it says. It says
6 additionally -- is that the word? "...any desired --
7 any desired additional," isn't that what it says?

8 Q. It says, quote, "Still, with an old style
9 filter, any desired additional nicotine 'kick'" --

10 A. Right. That's right.

11 Q. -- "could easily -- could be easily obtained
12 through pH regulation;" right?

13 A. Right. We agree that's what the document says.

14 Q. Sir, do you understand that what the author is
15 talking about is manipulating nicotine in order to
16 give a kick that would be more attractive to a young
17 smoker?

18 MR. FLYNN: Objection, it speaks for
19 itself.

20 A. I don't -- yeah, I don't --

21 I don't know what the author was getting at
22 here.

23 Q. You just can't say as you sit here one way or
24 the other; right?

25 A. No, I can't.

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1 Q. Sir, were you aware that tobacco manufacturers
2 at one time -- I'm sorry, strike that.

3 Were you aware of any of the cigarette
4 manufacturers ever considering root-beer flavored
5 cigarettes?

6 A. No.

7 MR. FLYNN: She's going to go to another
8 document.

9 MS. WIVELL: Can we go off the record for a
10 minute?

11 MR. FLYNN: Sure.

12 THE REPORTER: Off the record, please.

13 (Discussion off the record.)

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked previously
16 as Plaintiffs' Exhibit 722, this is a document that
17 begins with the Bates number 400649145; right?

18 A. Yes.

19 Q. It's entitled "PROJECT KESTREL."

20 A. Yes.

21 Q. Why don't you take a moment and read it.

22 MR. FLYNN: Seems to be undated, too,
23 but --

24 A. Yes, I've read it.

25 Q. Sir, this document also talks about developing a

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1 youth-oriented cigarette; doesn't it?

2 MR. FLYNN: It speaks for itself. But if
3 you got a --

4 A. Objective is new generation -- right. Yes.

5 Q. And the objective is a new generation of
6 cigarettes -- or I'm sorry, strike that.

7 The objective is, quote, "To develop a brand
8 which, quote, breaks the rules, quote, to appeal to a
9 new generation and shock their parents: to make
10 conventional brands look bland and weary;" right?

11 A. That's what the document says.

12 Q. And it talks about the fact that root-beer- and
13 Brazilian-fruit-juice-flavored cigarettes had been
14 considered in order to appeal to a younger
15 generation; right?

16 A. That's what the document says.

17 Q. Now this document also talks about a cigarette
18 which would incorporate a kick; right?

19 MR. FLYNN: Again it speaks for itself, but
20 if you can focus him where it is --

21 MS. WIVELL: On the first page, sir.

22 THE WITNESS: I'm sorry, I was on the
23 second. I'm sorry.

24 Q. All right. Let me rephrase the question.

25 A. Okay, I -- I --

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1 That's what the document says.

2 Q. All right. Just so we're clear here, Exhibit
3 722 also talks about developing a cigarette which
4 would have a sort of a kick; right?

5 A. That's what the document says.

6 Q. And it, too, talks about using ammonia -- I'm
7 sorry. Strike that.

8 It talks about using ammonia to generate
9 nicotine enhancement and using pH distortion to
10 liberate nicotine; right?

11 A. That's what the document says.

12 Q. Now do you know what AMTECH technology is?

13 A. No, ma'am, I do not.

14 Q. Do you know what role ammonia plays in the
15 nicotine ratio in cigarettes?

16 A. No, ma'am, I don't.

17 Q. Well sir, this document is talking about
18 developing a cigarette devoted to the literate youth
19 of today; right?

20 MR. FLYNN: Again it speaks for itself, but
21 if it's in there somewhere --

22 A. That's what the document says. I don't see it
23 right now, but it's fine; if you say so, I'll --

24 Q. Well sir, it says in the second complete
25 paragraph, "It was felt that the literate youth of

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1 today, being very image oriented, would require a
2 brand of cigarettes which was not an attempt to match
3 any other brands, like Marlboro for instance, but
4 which was completely unconventional and set new
5 standards encouraging their rebellion, not
6 necessarily just against parents but certainly
7 against the market norm. It would respond to the
8 person's individuality with the possibility of being
9 an alternative to drugs." Right?

10 MR. FLYNN: Yes, you read it right.

11 A. That's what the document says.

12 Q. Well sir, did anyone ever share with you the
13 fact that cigarettes like this, that broke the rules
14 and appealed to a new generation, were being
15 considered?

16 A. No.

17 Q. Does this document shock you, sir?

18 MR. FLYNN: Objection. I don't know what
19 you mean by that. That really has nothing to do with
20 anything, but --

21 Vague and ambiguous.

22 A. I just have to say that I don't know -- it's a
23 handwritten -- I --

24 I just don't know anything about it. I don't
25 even know if it's a company document or not.

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1 Q. Well sir, let me ask you this: Did any of the
2 members of The Tobacco Institute ever tell you that
3 the basis of their business was the high-school
4 student?

5 A. Absolutely not, no.

6 Q. So if -- if that is a position that the company
7 had, one of the companies had internally, that was
8 just something they didn't share with you.

9 A. That's correct. They have always said that
10 they're very concerned about youth smoking. That's
11 been the stated policy of the companies.

12 Q. Well sir, if a company said on one hand we're
13 very concerned about youth smoking, and then on the
14 other hand internally said the basis of our business
15 is the high-school student, they'd be speaking out of
16 both sides of their mouth; wouldn't they, sir?

17 MR. FLYNN: Objection.

18 A. I -- I can only go by what their stated position
19 is to me. They tell me what they're interested in in
20 this particular area, that they do want to stop youth
21 smoking, and they've stepped up to the plate and made
22 contributions to do just that. So I think actions
23 speak louder than words.

24 (Discussion off the stenographic record.)

25 (Plaintiffs' Exhibit 757 was marked

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1 for identification.)

2 BY MS. WIVELL:

3 Q. Sir, showing you what's been marked as

4 Plaintiffs' Exhibit 757, this is a document that

5 begins with the Bates number 03537131; right?

6 A. Yes, ma'am.

7 Q. It's dated August 30th, 1978?

8 A. Yes, ma'am.

9 Q. And it's entitled "Product Information;" right?

10 A. Yes, ma'am.

11 Q. Exhibit 757 is to Curtis Judge.

12 A. Yes, ma'am.

13 Q. Who is Curtis Judge?

14 A. Curtis Judge was the chairman of Lorillard

15 Tobacco Company.

16 Q. And he was also on the Executive Committee of

17 The Tobacco Institute; wasn't he, sir?

18 A. Yes, he was.

19 Q. Now sir, if you take a look at the third

20 paragraph, it says there at the end of the

21 paragraph -- I'm sorry. It says there -- strike

22 that.

23 Sir, if you take a look at the third paragraph,

24 it begins, "The success of NEWPORT has been fantastic

25 during the past few years;" right?

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1 A. That's what the document says.

2 Q. It says, "Our profile taken locally shows this
3 brand being pursued by black people" --

4 MR. FLYNN: "Purchased, purchased," not
5 "pursued."

6 MS. WIVELL: Pardon me.

7 Q. It goes on to say at the end of the sentence,
8 "the base of our business is the high school
9 student," doesn't it?

10 MR. FLYNN: Well it -- you're reading it
11 out of -- out of context now. You've got one phrase
12 of one sentence.

13 A. That's -- that's what that sentence says, yes,
14 ma'am.

15 MR. FLYNN: Phrase.

16 THE WITNESS: Phrase.

17 Q. Sir, did Mr. Judge -- strike that.

18 You've spoken with Curtis Judge; haven't you?

19 A. Yes, I have.

20 Q. On numerous occasions; right?

21 A. Yes, I have.

22 Q. You've spoken to him on the subject of youth
23 smoking; haven't you?

24 A. I have. As far as his company position on youth
25 smoking when we were developing the programs, their

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1 company would support it or not support the programs
2 that I've outlined to you earlier.

3 Q. Did he ever tell you that the base of his
4 company's cigarette base was the high -- the
5 high-school student?

6 A. No.

7 Q. Never shared that information at all with you in
8 any way.

9 A. No.

10 (Plaintiffs' Exhibit 758 was marked
11 for identification.)

12 BY MS. WIVELL:

13 Q. Sir, showing you what's been marked as
14 Plaintiffs' Exhibit 758, this is a document that
15 begins with the Bates number 2025862354; right?

16 A. Yes, ma'am.

17 Q. This is a press release from The Tobacco
18 Institute; isn't it?

19 A. Yes.

20 Q. And in this press release The Tobacco Institute
21 states that it has long -- I'm sorry. In this press
22 release --

23 A. Is there a reference --

24 Excuse me. Is there a reference to what year
25 this was?

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- 1 Q. I don't have that information, sir.
- 2 A. We don't know when it was released.
- 3 Q. Why don't you take a moment and read it and see
- 4 if it will help you place it in context.
- 5 A. I have read the document.
- 6 Q. Sir, Exhibit 758 refers to several activities
- 7 which the tobacco industry has engaged in relating to
- 8 youth activities -- or youth smoking; right?
- 9 A. Yes, the document does.
- 10 Q. And it says here, "The tobacco industry has long
- 11 taken the position that smoking is an adult practice
- 12 to be considered solely by mature, informed persons."
- 13 Right?
- 14 A. Yes.
- 15 Q. And it goes on to claim that the industry has
- 16 taken strict measures to address youth smoking;
- 17 right?
- 18 A. Yes.
- 19 Q. Sir, this document, when it was sent out by The
- 20 Tobacco Institute, you were president of The Tobacco
- 21 Institute; weren't you?
- 22 A. Yes.
- 23 Q. And we know that because, although it's not
- 24 dated, it refers to several activities that took
- 25 place after you became president of the Institute;

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1 right?

2 A. That's correct.

3 Q. Now sir, this document, Exhibit 758, was it
4 approved by the various members of The Tobacco
5 Institute before it was sent out?

6 A. I don't know what the clearance process would
7 have been. I'm -- I'm certain that it was cleared by
8 our -- our counsel. I do not know if the companies
9 individually saw it or not.

10 Q. Well sir, this document doesn't tell the people
11 reading it that the basis of Lorillard's cigarette
12 business is the high-school student; right?

13 MR. FLYNN: It's just arguing with him. It
14 obviously speaks for itself.

15 A. I think the -- the --

16 I think the document fairly represents our
17 activity in the youth area during this timeframe.

18 Q. But it does not say anything about the basis of
19 Lorillard's cigarette business being the high-school
20 student; does it?

21 A. It talks about what the Institute and industry
22 has been doing in the youth period. I think that's
23 the purpose of the -- of the document.

24 Q. Just --

25 A. It says industry initiatives on youth smoking,

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1 and we've talked about that before today, some of the
2 things we've been doing.

3 Q. I understand that, sir. But it says nothing
4 about the basis of Lorillard's cigarette business
5 being the high-school student; does it?

6 A. I don't know why it should. I -- I can't see
7 that -- it says it's --

8 This is about the tobacco industry's initiatives
9 against youth smoking. Is that not correct?

10 Q. Well sir, the answer to my question is "no," the
11 document, Exhibit 758, says nothing about the base of
12 Lorillard's business being the high-school student;
13 right?

14 A. No, that's not what I said. I said it talks
15 about what the industry -- the strict measures that
16 we've taken to address youth smoking. That's the
17 purpose of this. Right?

18 Q. All right. And sir, you would agree that it
19 says nothing in here about the basis of Lorillard's
20 business being the high-school student; right?

21 A. This talks --

22 This does not talk about any individual
23 companies.

24 Q. Now sir, it does not say anything about creating
25 a cigarette which breaks the rules --

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1 MR. FLYNN: Just --

2 Q. -- by appealing to a new generation of youth
3 smokers; does it?

4 MR. FLYNN: This is just argumentative. It
5 says exactly what it says. You know it doesn't say
6 anything like that, the witness knows that.

7 A. This --

8 This, madam, just goes to the initiatives that
9 we have responsibility for at the Institute, --

10 Q. To be --

11 A. -- our program. As I've said already, we're not
12 involved in marketing or the production, we're only
13 involved in trade association, and this is a Tobacco
14 Institute trade association response and what we are
15 doing about youth initiatives and the programs that
16 we've made big investments in over the years.

17 Q. Well sir, let me ask you this: Does this
18 document say anything about trying to increase the
19 smokers in the 14- to 24-year-old age group?

20 MR. FLYNN: It's just argumentative. It
21 says what it says. Why do you keep beating this to
22 death?

23 A. Well, but the document does say about what we
24 are trying to do to try to discourage youth smoking.
25 I think that's the point of the document, what --

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1 what's the industry doing to -- and --

2 And this lays it out.

3 Q. Well sir, earlier today you told me -- and
4 correct me if I'm wrong -- that one of the reasons
5 that the industry claimed it didn't want children
6 smoking was because they didn't have all the
7 information they needed. Is that right?

8 A. Well I -- I think you're misquoting what I
9 said. I -- what I -- what I meant to say is,
10 obviously, that smoking is an adult custom, and that
11 there are many activities that are adult customs,
12 that people ought to wait until they're older, 21
13 years of age, to engage in, be it sex or drinking or
14 smoking or a lot of other activities.

15 Q. Let me go back to my question.

16 Sir, is it true that one of the reasons that The
17 Tobacco Institute claims it doesn't want children to
18 smoke is because people have to have all the
19 information relative to tobacco? Is that right?

20 A. We want people to have all the information, that
21 is correct.

22 Q. All right. Well let me ask you one more time,
23 then, sir: Does Exhibit 758, The Tobacco Institute
24 press release entitled "...ON YOUTH SMOKING" tell the
25 person who's reading it that one of the companies was

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1 trying to increase the cigarette smoking in the
2 ages -- 14- to 24-year-old age group?

3 MR. FLYNN: Your emotional intensity
4 doesn't change the objective nature of the question,
5 which is that it's still argumentative. The document
6 still speaks for itself.

7 A. Madam, people get information from a lot of
8 different sources, The Tobacco Institute being one
9 perspective. What we're doing is giving our
10 perspective relative to industry initiatives in the
11 youth area.

12 Q. Well sir, can you point out where it says "And
13 by the way, one of our companies is trying to
14 increase its smoking among 14- to 24-year-old age
15 group? Where can you point out where it says that?

16 MR. FLYNN: You're just arguing with him.
17 You know it doesn't say that. He knows it doesn't
18 say it. You just keep asking the same thing and get
19 the same answer.

20 A. But madam, I would like you to accept that
21 people get information from a lot of different
22 places. Look at the pack, the information on a pack
23 of cigarettes. Look at the information you get every
24 day in the newspaper. I mean there's a lot of
25 different information about smoking that comes out.

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1 Q. Well sir, earlier we looked at a Tobacco
2 Institute press release that said they were going to
3 get out all the facts; right?

4 A. How are we going to get out all the facts? What
5 are "all," all the facts on something? I mean it --

6 Q. Do you recall, sir, looking at a press release
7 that talked about how The Tobacco Institute was going
8 to get out all the facts?

9 MR. FLYNN: Objection, the document speaks
10 for itself. I don't know --

11 I guess I'd ask the witness be shown a
12 document.

13 THE WITNESS: Yeah, I can't recall.

14 MR. FLYNN: I don't think it says exactly
15 that.

16 A. When you say --

17 Q. Sir, do you recall seeing a press release that
18 said the industry will force -- will continue
19 forcefully its support of responsible research
20 efforts to establish the true facts?

21 A. May I see the -- see the document, please?

22 (Plaintiffs' Exhibit 412 handed to the
23 witness.)

24 THE WITNESS: Thank you.

25 MR. FLYNN: Exhibit 412.

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1 THE WITNESS: Okay.

2 A. Madam, this was back, I guess, in the '50s. I
3 don't even see a date on it. Back in 19 --

4 MR. FLYNN: No, '65.

5 A. '65, 1965. I don't know what the industry was
6 doing back in 1965. I didn't say anything at any
7 point in this conference that I knew anything that
8 happened in 1965. I didn't join the Institute until
9 the early '80s.

10 Q. Well sir, do you recall seeing a press release
11 earlier today that said we shall continue all
12 possible efforts to bring the facts to light? Do you
13 recall that?

14 A. Would you refresh my memory with the document,
15 please.

16 Here, is this yours? I'll give this back.

17 (Plaintiffs' Exhibit 3504 handed to the
18 witness.)

19 A. Again, this document goes back to the '50s or
20 the '60s. I'm not sure I understand your point. I
21 don't even know if this --

22 Okay, it's Tobacco Institute. This is back in
23 the '50s or '60s.

24 Q. And because it's back in the '50s and '60s --

25 A. I have no knowledge.

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1 Q. All right.

2 A. I wasn't involved in it at that time.

3 Q. Well sir, let's take a look at Exhibit 758

4 again, something you were involved with.

5 A. 758.

6 MR. FLYNN: That's this one.

7 THE WITNESS: Okay, right.

8 Q. You were involved in the preparation of Exhibit

9 758; right?

10 A. I did not prepare this. I was president of The

11 Tobacco Institute. I am aware of this. And I think

12 that it speaks for itself. I think it's a pretty

13 good article, don't you?

14 Q. Well sir, when it says in the beginning, "The

15 tobacco industry has long taken the position that

16 smoking is an adult practice to be considered solely

17 by mature, informed persons," what did you do to make

18 sure that that that was an accurate statement when it

19 was sent out?

20 A. It was an accurate statement as reflected by the

21 policy of my board members, that they want their

22 product used by adults, not youngsters.

23 Q. And it certainly is at odds with the claim -- or

24 the intended purpose to increase market share among

25 14- to 24-year-old smokers; isn't it, sir?

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1 A. But madam, I'm -- I'm not involved in the
2 sales. I'm not -- have no products. The Tobacco
3 Institute, that's not what we're all about. Ours is
4 youth initiatives, providing information, collecting
5 information. That's the sole purpose of the
6 Institute.

7 Q. Well sir, is it appropriate in your opinion to
8 claim publicly that the tobacco industry is doing
9 everything it can to prevent youth smoking on one
10 hand, and then to try and increase cigarette smoking
11 among 14-year-old smokers on the other?

12 MR. FLYNN: It's just argumentative. The
13 document doesn't say "everything it can," and he's
14 answered this question about 10 times.

15 A. I -- I'm really sorry that --
16 You know, I don't want to be argumentative, but
17 I -- I would -- after reflecting on the document, I
18 see there are some things in here that have been
19 missed that we've done relative to youth smoking,
20 like going out and changing most of the state laws to
21 increase the age in terms of purchase of product.
22 There's been a lot of activity that we've been
23 dedicated to over last few years in that area.
24 That's the reason I guess maybe I'm quite concerned
25 that you're not getting the purpose of this -- this

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1 document.

2 Maybe I've got your document. Is this yours?

3 MR. FLYNN: Goes on that stack.

4 THE WITNESS: Oh, goes over here.

5 Q. Sir, isn't it a fact that The Tobacco Institute

6 opposed legislation in the state of Minnesota

7 relating to penalties for permitting tobacco to be

8 used by persons under the age of 18?

9 A. I don't -- I don't know. I'd have to --

10 If you've got something I can look at, why maybe

11 I can reflect on it.

12 (Plaintiffs' Exhibit 759 was marked

13 for identification.)

14 BY MS. WIVELL:

15 Q. Sir, showing you what's been marked as

16 Plaintiffs' Exhibit 759, this is a document that

17 begins with the Bates number 502052361; right?

18 A. Yes.

19 Q. This is a document written by The Tobacco

20 Institute?

21 A. Yes.

22 Q. Dated February 4th, 1965; right?

23 A. Yes.

24 Q. And on the first page there's a reference to

25 Minnesota; correct?

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1 A. Yes.

2 Q. And it says, "The five bills introduced in
3 Minnesota are now pending before Committees. We, of
4 course, are diligently working toward keeping these
5 bills from getting out of Committees." Right?

6 A. That's what the document says.

7 Q. Now sir, if we turn to the third page of Exhibit
8 759, it talks about those five bills at the bottom --
9 beginning at the bottom of the page; doesn't it?

10 A. Yes.

11 Q. And one of those five bills related to penalties
12 for permitting tobacco to be used by persons under
13 age 18; right?

14 A. I would guess I'm making a connection, ah --
15 it's --

16 Our earlier exchange, this goes back to 1965,
17 and it's -- it's not something I was involved with,
18 obviously, as we've gone over numerous times. But if
19 you also -- I -- I can't really tell you --

20 There's reference to the -- relating to the
21 penalties for permitting tobacco to be used by
22 persons under age 18. I don't know -- I certainly
23 don't know what that bill pertains to, if this is the
24 title of the bill and it's not a summary of the
25 bill. I don't know the specifics of -- of the

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1 legislation.

2 Q. Well sir --

3 A. And --

4 Q. -- what we --

5 A. And it's back in 1965.

6 Q. What we do know about it is that The Tobacco
7 Institute opposed this measure relating to penalties
8 for permitting tobacco use -- for permitting tobacco
9 to be used by persons under age 18; right?

10 MR. LAYDEN: Objection, foundation.

11 A. But that doesn't tell the whole story. Maybe
12 the penalties were completely out of line with
13 surrounding states or, really, the reality of what
14 was happening in that marketplace.

15 Q. Sir, isn't it a fact that --

16 A. Do you know what that legislation said?

17 Q. Sir -- excuse me, sir. You know the rules of a
18 deposition.

19 A. I'm sorry.

20 Q. I get to ask the question --

21 A. Oh.

22 Q. -- and you have to answer.

23 A. All right.

24 MR. FLYNN: Within reason.

25 Q. Now sir, --

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1 (Laughter.)

2 A. I'm sorry.

3 Q. -- isn't it a fact that The Tobacco Institute
4 has also opposed vending machine bans in Minnesota
5 which were directed at trying to prevent children
6 from obtaining cigarettes?

7 MR. FLYNN: It's a dual question, opposing
8 it and the reason for it. But if you know the answer
9 to one or both, tell her.

10 A. I do not know the answer.

11 What year are we talking about? Is this in the
12 same year, same timeframe, '65, madam?

13 Q. Sir, are you aware of the fact that within the
14 last 10 years, The Tobacco Institute has opposed
15 vending machine bans in the state of Minnesota? I'm
16 sorry, strike that.

17 Are you aware of the fact that within the last
18 10 years, The Tobacco Institute has opposed vending
19 machine legislation in the state of Minnesota?

20 A. I think maybe you stated it right the first
21 time. If there was a ban, obviously we want to
22 have -- be able to sell our products there. I mean
23 the vending machine industry is very important in the
24 state. If there was a ban, we would like to -- to
25 have the access to vending machines, like combs or

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1 candy bars or anything else.

2 Q. Well sir, isn't it a fact that if The Tobacco
3 Institute were serious about restricting youth
4 smoking, it would have worked for vending machine
5 bans?

6 MR. LAYDEN: Objection, argumentative.

7 A. We have gone for and promoted legislation in --
8 in some places to remove vending machines with any
9 access to youth, as we've been -- or close
10 proximity. There's been many cases like that.

11 Q. Sir, isn't it a fact that one of the Tobacco
12 Institute employees questioned how the Institute
13 could be serious about youth prevention and still --
14 strike that.

15 Sir, isn't it true that one of the Tobacco
16 Institute employees questioned the Institute's
17 seriousness about youth smoking by saying
18 shouldn't -- if we were serious about this, why not
19 discontinue vending-machine sales?

20 A. I don't know about that. There's -- I think --
21 I just don't know. I've -- I've never had anything
22 come up like this. Is there something I can refer
23 to?

24 Q. Sir, showing you --

25 A. Are we through with this?

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1 Q. No, sir, we're not --

2 Well yes, you can put that aside.

3 A. Put that aside.

4 Q. Sir, showing you what's been marked as

5 Plaintiffs' Exhibit 460, this is a memo -- I'm

6 sorry. Strike that.

7 Four sixty is a Tobacco Institute series of

8 memos; isn't it?

9 A. Four -- yes. Yes.

10 Wait. It's not a series of memos, it is one

11 memo. Is that correct?

12 MR. FLYNN: No. Turn the page. There's

13 three documents stapled together numbered

14 sequentially, and they all are dated around August

15 1979.

16 THE WITNESS: All right.

17 MR. FLYNN: And that --

18 THE WITNESS: All right. What's the

19 question?

20 Q. The documents which comprise Exhibit 460 are

21 records from The Tobacco Institute; aren't they?

22 A. Yes, ma'am.

23 Q. You've seen them; haven't you, sir?

24 A. I have not seen them. This is 1979, 8/1/1979,

25 8/2/1979. I will take time to read them if you want

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1 me to.

2 Q. Please do.

3 A. But I have not seen them, no.

4 MR. LAYDEN: Counsel, do you have an extra
5 copy of that one?

6 MS. WIVELL: No. Sorry.

7 MR. LAYDEN: That's okay.

8 A. I've read the -- I've read the documents.

9 Q. Sir, the documents that are the first two
10 pages --

11 A. Yes, ma'am.

12 Q. -- concern a pre-adult education program about
13 cigarette smoking; right?

14 MR. FLYNN: They speak for themselves, but
15 if that's what they convey to you, you can affirm it.

16 A. Yes, that's what the document says.

17 Q. And the third page of the document is a memo
18 from Jack Mills to Bill Kloepfer, who was then
19 vice-president of public relations for The Tobacco
20 Institute; right?

21 A. Bill Kloepfer was.

22 Q. Yes, sir.

23 A. Yes.

24 Q. And Jack Mills held what position, sir?

25 A. He was in our federal relations division.

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1 Q. And he asks the question in the second paragraph
2 of the memo concerning vending-machine sales; doesn't
3 he?

4 A. Yes. That's what the document says.

5 Q. It says, "The second paragraph of your suggested
6 statement worries me. It could be asked, "How will
7 we control disbursement of cigarettes from vending
8 machines; and if we are serious about this, why not
9 discontinue vending machine sales?"

10 A. That's what the document says.

11 Q. And sir, what he's referring to is the second
12 paragraph of the draft which comprises the second
13 page of Exhibit 460; right?

14 MR. FLYNN: Again, if you know.

15 A. I don't know if it was or not. Let's see, that
16 was August 2nd. I don't know. And this -- and you
17 say it refers to what paragraph?

18 Q. The second paragraph --

19 MR. FLYNN: The next page.

20 Q. -- of the second page of Exhibit 460.

21 A. I don't know if it does or not.

22 Q. Well sir, let me ask you this: If The Tobacco
23 Institute was serious about controlling or preventing
24 youth -- strike that.

25 If The Tobacco Institute was serious about

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1 preventing youth smoking, isn't it true one good way
2 to stop young people from buying cigarettes would be
3 to discontinue vending-machine sales?

4 MR. FLYNN: Objection, it's argumentative.
5 Again you got a statement he's got to affirm to
6 answer the question.

7 A. I don't know. There's been a lot of discussion
8 about vending-machine sales. I think your state,
9 some other states, are -- are different. You know,
10 it's --

11 Q. I -- I understand --

12 A. But the fact is that vending-machine sales
13 constitute such a small part of the sale of the
14 product that -- it's less than one -- one and a half
15 percent or one percent, I don't know. It's a very
16 small amount.

17 Q. Well sir, if vending-machine sales comprise such
18 a small part, then why wouldn't it be a good idea --
19 strike that.

20 You agree that if a vending machine is in a
21 hallway someplace, there's nothing to prevent a young
22 smoker from coming up and putting his or her money in
23 and buying a pack of cigarettes; right?

24 MR. FLYNN: Objection, it's vague and
25 ambiguous. Hallway in a bar? A hallway in a

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1 school? Or a hallway in --

2 It's vague and ambiguous as phrased.

3 A. Well I don't -- I don't know where the -- the
4 location would be. I -- I don't -- I don't know.
5 I -- I don't know. I'm not into sales of the
6 product, as I said earlier.

7 Q. Well sir, you've seen vending machines that
8 dispense cigarettes in the halls of restaurants;
9 haven't you?

10 A. Yes.

11 Q. And there would be nothing there to prevent a
12 child -- I'm sorry. Strike that.

13 There would be nothing there to prevent a young
14 person from putting his or her money into that
15 machine and getting a pack of cigarettes; right?

16 A. But that same scenario that you just pointed
17 out, isn't that usually a cashier close by or it's on
18 the premise? I mean it's -- there are people around,
19 right?

20 Q. Well sir, let me ask you this: If -- if
21 cigarette vending-machine sales are such a small
22 proportion of total sales of cigarettes, why, then,
23 did The Tobacco Institute feel it was necessary in
24 Minnesota to oppose restrictions on vending-machine
25 sales?

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1 A. Well madam, most of the stuff that you've showed
2 me -- most of the documents, and even this document,
3 goes back to 1979, and -- and the situations have
4 changed since 1979 and today.

5 Q. All right. Well let's talk about 1987.

6 A. Okay.

7 Q. Let's talk about the 1987 legislative session in
8 Minnesota. Isn't it true that The Tobacco Institute
9 lobbyists basically opposed vending-machine cigarette
10 bans?

11 A. Complete bans?

12 Q. Yes, sir.

13 A. I don't know. I -- I would suspect back in 1987
14 they wouldn't want to have a complete ban any more
15 than we want to have a prohibition against tobacco
16 throughout the United States.

17 Q. Well sir, --

18 A. That's --

19 Q. -- if vending-machine sales are such a small
20 part of total sales and banning cigarette sales via a
21 vending machine was a way to prevent young folks from
22 buying cigarettes, wouldn't it be a good idea to
23 simply ban cigarettes sales via vending machines?

24 MR. FLYNN: Objection, it's a dual --

25 A. Might be.

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1 MR. FLYNN: It's a dual question.

2 A. Might be. I don't know. We'd have to --

3 Something we could look into, consider.

4 Q. Sir, let me ask you this: If the tobacco
5 industry was serious about preventing youth from
6 smoking, why did it oppose a -- a smoking restriction
7 in schools in the state of Minnesota?

8 A. You have two parts to that question. You
9 started off if we're serious about it. I want to say
10 that we are serious about youth smoking. Now the
11 second part of your question was relative to
12 restrictions in schools. Now where are you talking
13 about? Where is this coming from? I don't -- I
14 don't understand that.

15 Q. Well sir, while you were president of The
16 Tobacco Institute, isn't it true that Tobacco
17 Institute lobbyists opposed smoking restrictions in
18 schools in the state of Minnesota?

19 A. I don't know. Do you have something -- Maybe
20 this was a teacher smoking room or the --

21 I cannot imagine us not wanting to curtail youth
22 smoking, but smoking restrictions, how far does it
23 go? Is it a teacher's room, or what was the
24 legislation?

25 THE WITNESS: Am I through with this

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1 document here? This?

2 MS. WIVELL: For the time being.

3 THE WITNESS: For the time being.

4 (Plaintiffs' Exhibit 760 was marked
5 for identification.)

6 BY MS. WIVELL:

7 Q. Sir, showing you what's been marked as
8 Plaintiffs' Exhibit 760, this is a Tobacco Institute
9 document Bates numbered 283315; right?

10 A. Yes, ma'am.

11 Q. It's entitled "1988 MINNESOTA LEGISLATIVE PLAN,
12 MINNESOTA 1987 LEGISLATIVE OVERVIEW;" right?

13 A. Yes, ma'am.

14 Q. Why don't you take a minute or two to review
15 this document.

16 A. I've read the document.

17 Q. Sir, Exhibit 760 concerns activities that took
18 place during the 1987 legislative session in the
19 state of Minnesota; right?

20 A. Yes, ma'am.

21 Q. It describes that session as, quote, the most
22 disturbing -- I'm sorry. Strike that.

23 It describes that session as, quote, one of the
24 most disturbing and worrisome legislative sessions in
25 our industry's history; right?

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- 1 A. According to the author of this, that's --
2 that's true. That's what it says.
- 3 Q. Do you know the author of this document?
- 4 A. No. Do you?
- 5 Q. Who was in charge of state legislative
6 activities for the Tobacco Institute in 1987?
- 7 A. Kurt Malgram, I think.
- 8 Q. Just so we're clear here, one of the purposes of
9 The Tobacco Institute is to lobby; isn't it?
- 10 A. Well it's -- .
11 One of the purposes, like any trade association,
12 is to inform the legislators --
- 13 Q. And sir --
- 14 A. -- on matters affecting the industry if they
15 want the information or if they -- or if we think
16 they ought to have an industry perspective.
- 17 Q. So the answer to my question is yes, one of the
18 activities of -- one of the purposes of The Tobacco
19 Institute is to lobby; right?
- 20 A. Just like everyone else, right.
- 21 Q. Okay.
- 22 A. Even lawyers.
- 23 Q. Now sir, would you turn to the second page of
24 Exhibit 760.
- 25 A. Seven sixty, second page.

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1 MR. FLYNN: That's the one you have.

2 A. Yes, ma'am.

3 Q. And there's a discussion concerning the lobbying
4 efforts in Minnesota; right?

5 A. Yes, ma'am.

6 Q. And there is reference there to measures which
7 were being contained by the lobbyists; right?

8 A. I don't know if that's the language that I would
9 use, but that's what it says in the document.

10 Q. All right. It does say "other measures were
11 consistently being contained by this group." Right?

12 A. Well that's -- that's what the document says.
13 But you know how it could mean other things, right?

14 Q. Well you understand that that means that -- that
15 those particular measures which are listed thereafter
16 did not become law in the state of Minnesota; right?

17 A. For whatever reason. But I don't know if it was
18 because they were contained. Maybe the time ran out
19 in the legislative session.

20 Q. All right.

21 A. Whatever.

22 Q. One of the measures that was, according to this
23 document, being contained by the lobbyists on behalf
24 of the tobacco industry was a vending machine ban;
25 right?

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1 MR. FLYNN: It speaks for itself. But do
2 you have House -- HF 32?

3 A. "Vending ban," yes, ma'am.

4 Q. And another one of the bills that was being
5 contained by the tobacco industry lobbyists was a
6 smoking restriction/schools bill; right?

7 A. It says -- that -- that's what the --

8 I guess it must be the title of the bill. I
9 don't know if that's the content of the bill. But
10 this is what the document says.

11 Q. All right. It refers to HF 227, "Smoking
12 restrictions/schools;" right?

13 A. Right.

14 Q. And you don't know as you sit here today exactly
15 what the purpose of that bill was.

16 A. No. As I said earlier, might have been the
17 teacher's lounge.

18 Q. Well sir, isn't it true that during the 1987
19 legislative session -- I'm sorry, strike that.

20 Isn't it true that during the next legislative
21 session, the tobacco industry was successful in
22 stopping a bill in the state of Minnesota which would
23 have prohibited cigarettes dispensing via vending
24 machines?

25 MR. FLYNN: That is a different question.

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1 A. It's not in this --

2 MR. FLYNN: Forget this document. She's
3 now in the next year.

4 A. No, I don't know -- I don't know about that. Do
5 you have something --

6 It doesn't pertain to this document, obviously.

7 Q. No, sir.

8 A. Okay.

9 Q. But I'm asking you: Do you understand --

10 A. I don't know at what --

11 I do not know what was being considered by the
12 state legislature in 1988 in the state of Minnesota.

13 Or --

14 MR. FLYNN: You've answered it. She'll ask
15 you another one.

16 Q. Well sir, do you regularly get reports from the
17 lobbyists that The Tobacco Institute employs
18 throughout the country?

19 A. Yes, ma'am. But understand that, for example,
20 this -- this last year we had over 2,000 bills in the
21 state legislatures throughout the United States, and
22 I cannot remember every state.

23 Q. Fair enough.

24 (Plaintiffs' Exhibit 761 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as

3 Plaintiffs' Exhibit 761, this is a Tobacco Institute

4 document; isn't it, sir?

5 A. I recognize the names. But I do not know,

6 unless there's someplace on it --

7 I'm not familiar with the document, if it's a

8 Tobacco Institute document or not.

9 Q. All right. Well it starts with the Bates number

10 TIMN --

11 A. Where is that now?

12 Q. -- 457974; right?

13 A. Right. But that's not anything that we have at

14 The Tobacco Institute; is it? Is that your number?

15 Q. No, that's your number, sir.

16 A. It is. Okay.

17 Q. Now this is entitled "REVISED, ACTION-TRAC;"

18 right?

19 MR. FLYNN: I'm not sure that's the title.

20 A. "ACTION-TRAC."

21 MR. FLYNN: It says "REVISED" there.

22 A. It says ACTION-TRAC, REVISED. I don't know.

23 Q. It's a memo from Dan Nelson to Paul Emrick;

24 right?

25 A. Yes.

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- 1 Q. Who is Dan Nelson?
- 2 A. I cannot remember.
- 3 Q. Who is Paul Emrick?
- 4 A. Paul Emrick was one of our vice-presidents in
- 5 the federal relations division. Dan --
- 6 I don't know what year.
- 7 Q. All right. Why don't you take a minute --
- 8 A. Dan may have been an employee of ours.
- 9 Q. Why don't you take a minute and review Exhibit
- 10 761.
- 11 A. Okay.
- 12 Yes, ma'am, I've read -- well the front page.
- 13 Do you want me to read the back page too?
- 14 Q. Certainly.
- 15 A. Yes, ma'am, I've read it.
- 16 Q. All right. Exhibit 761 concerns efforts on
- 17 behalf of The Tobacco Institute to oppose a bill in
- 18 the Minnesota legislature that would ban
- 19 vending-machine sales of tobacco products; right?
- 20 MR. FLYNN: Well, it says for multi-product
- 21 vending machines. But anyway, it speaks for itself.
- 22 A. Yes.
- 23 Q. And sir, it goes on to note that the industry
- 24 was successful in stopping Senate conference
- 25 committee's attempts to amend that bill into a total

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1 vending machine ban; doesn't it?

2 A. That's what the --

3 That's what the document says.

4 Q. And sir, it was the industry's -- the tobacco --

5 I'm sorry, strike that.

6 It was the tobacco industry's objective to kill
7 the bill that's referred to in this document; wasn't
8 it?

9 A. Yes.

10 Q. Sir, isn't one of the reasons that The Tobacco
11 Institute tried to oppose this bill and other bills
12 that we've looked at in other documents in this
13 exhibit is that smoking prevention can be hazardous
14 to the tobacco industry's health?

15 MR. LAYDEN: Objection, argumentative.

16 MR. FLYNN: That's just argumentative. Let
17 me --

18 Wait. Just don't answer that for a second.

19 "Isn't one of the reasons" -- it's just --

20 I wish I could instruct him not to answer, but I
21 can't, so I guess you have to answer the question,
22 argumentative and mean as it is.

23 A. Well I think The Tobacco Institute and the
24 tobacco manufacturers are the manufacturers of a
25 legal product and they ought to be able to

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1 merchandise and market their product like any other
2 product. If it's an illegal product we're talking
3 about, it's something else. If we're talking about
4 prohibition, then let's talk about prohibition. If
5 you talk about bans, you're talking about
6 prohibition. It's a legal product.

7 Q. Well sir, let me rephrase the question a little
8 bit differently. Isn't it true that The Tobacco
9 Institute viewed youth smoking prevention as
10 potentially hazardous to the tobacco industry's
11 health?

12 A. Absolutely not. As I've said earlier, we have
13 constantly tried to have strong programs in the youth
14 area relative to smoking by young people.

15 Q. Who is Lucy Suddreth?

16 A. I have no idea.

17 THE WITNESS: Are we through with this?

18 MS. WIVELL: Yes, sir.

19 (Plaintiffs' Exhibit 762 was marked
20 for identification.)

21 BY MS. WIVELL:

22 Q. Sir, showing you what's been marked as
23 Plaintiffs' Exhibit 762, this is a document entitled
24 "TEENAGE SMOKING," by Lucy D. Suddreth, The Tobacco
25 Institute, July 30th, 1982; right?

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1 A. That's what the document says, yes.

2 Q. Now for the record, the Bates number is

3 TIMN0237382; right?

4 A. Yes.

5 Q. Sir, could you turn to the bottom of -- or I'm

6 sorry, the top of the page that begins -- begins --

7 I'm sorry. Strike that.

8 Could you turn to the bottom of the page that

9 ends with the Bates number 388.

10 A. 388. Okay. 388.

11 Q. And there at the top of the page do you see the

12 statement, "Smoking prevention strategy could be

13 hazardous to the tobacco industry's health?"

14 A. I see that statement.

15 Q. Do you know to what Ms. Suddreth was referring

16 when she made that statement?

17 A. I do not know to what she was referring when she

18 made that statement.

19 Q. Sir, could you turn to the top of the next

20 page. There it says in the -- at the end of the

21 paragraph, "But there could be serious repercussions

22 if education officials feel that teachers and other

23 personnel should be prohibited from smoking on school

24 grounds." Right?

25 MR. FLYNN: Then it has handwriting "What

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1 are those repercussions?"

2 But has she read it right?

3 A. She has read it right. But there is a
4 handwritten note there, "What are those
5 repercussions?"

6 Q. Sir, isn't it true that there could be serious
7 repercussions to the tobacco industry in the whole if
8 teachers and other personnel were prohibited from
9 smoking on school grounds?

10 A. Would -- would you ask that question again?

11 Q. Yes. Isn't it true that there could be serious
12 repercussions to the tobacco industry if teachers and
13 other personnel were prohibited from smoking on
14 school grounds?

15 A. I -- I don't --

16 This is not any language I'd use. I don't know
17 what you mean by "serious repercussions." I can't
18 imagine any serious repercussions, but -- you know, I
19 think this is --

20 This is an outline? I don't -- I don't know
21 what this -- I've never -- I don't know what this --
22 handwritten notes on it. Are you saying this is --
23 what -- what's -- what's your point here, I guess?
24 This is an outline, or I -- this isn't completed
25 staff work or --

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1 Q. Move to strike.

2 A. I don't even know who the person is in -- in the
3 organization.

4 Q. Move to strike the non-responsive portion of the
5 answer.

6 A. What's that? I'm sorry.

7 MR. FLYNN: He has a right to assert some
8 defense. You've been throwing all these documents in
9 front of him, and if he's raising that despite the
10 description of a TI document, he's never seen it,
11 doesn't know the author, it's relevant in fairness to
12 the witness.

13 MS. WIVELL: Well sir --

14 MR. FLYNN: For the record, it's got to be
15 in, whether the jury ever hears it or not.

16 Don't worry about it.

17 MS. WIVELL: Why don't we take a break.

18 MR. FLYNN: Okay.

19 THE REPORTER: Off the record, please.

20 (Recess taken.)

21 BY MS. WIVELL:

22 Q. Sir, as president of the tobacco industry, you
23 have --

24 MR. FLYNN: Institute.

25 Q. -- recognized --

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1 MR. FLYNN: Institute.

2 MS. WIVELL: Sorry.

3 Q. As president of The Tobacco Institute, you have
4 recognized that there are those who do not believe
5 the industry's position on teenage smoking; right?

6 A. Yes. They're always entitled to their opinion.

7 Q. And you understand that -- I'm sorry, strike
8 that.

9 You understood in your early years as president
10 of The Tobacco Institute that the teenage smoking
11 issue had enormous negative potential for the tobacco
12 industry; didn't you, sir?

13 A. Yes.

14 Q. And you worked at trying to contain the teenage
15 smoking issue; didn't you, sir?

16 A. How do you mean "contain?" I'm not sure what
17 you mean by --

18 Q. Well sir, haven't you written that "Though we
19 have been somewhat successful in containing it, the
20 teenage smoking issue continues to pose serious
21 negative legislative and public relations potential?"

22 A. If I said that, I think what I would -- would be
23 referring to is the fact that this teenage smoking --

24 Well in your own state, for example, have a tax
25 increase, you know, tie it into teenage smoking; tie

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1 in a ban and tie it into teenage smoking. It's just
2 sort of like the people, rather than decide it on the
3 merits, they want to involve teenage smoking rather
4 than what it is. If there's a prohibition against
5 advertising, it's because of teenage smoking.

6 Q. Well sir, you understand that youth smoking is a
7 considerable interest to the American population;
8 don't you?

9 A. It is to the American population and also to The
10 Tobacco Institute, yes, as I've testified earlier.

11 Q. Now sir, let me go back and see if I can get an
12 answer to my previous question.

13 Haven't you said that "Though we have been
14 somewhat successful in containing it, the teenage
15 smoking issue continues to pose serious negative
16 legislative and public relations potential?

17 A. I can't remember saying that, but I -- I can --
18 I think that says succinctly what I said, that that's
19 sort of what -- the engine that's driving so many of
20 these different problems.

21 (Plaintiffs' Exhibit 763 was marked
22 for identification.)

23 BY MS. WIVELL:

24 Q. Sir, showing you what's been marked as
25 Plaintiffs' Exhibit 763, this is a letter you wrote

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1 to Edward Horrigan, who was then chair of the board
2 of R. J. Reynolds Tobacco Company; right?

3 A. That's -- that's correct.

4 Q. For the record, the Bates number is 503907468;
5 right?

6 A. Yes.

7 Q. And in the first paragraph you say, "Though we
8 have been somewhat successful in containing it, the
9 teenage smoking issue continues to pose serious
10 negative legislative and public relations potential;"
11 right?

12 A. That's correct.

13 Q. Now sir, what did you mean by the fact that
14 teenage smoking posed a potential public relations --
15 a negative public relations potential?

16 MR. FLYNN: He just answered it. But go
17 ahead.

18 A. I -- I answered it by saying that many times the
19 teenage smoking issue, you know, introduce
20 legislation that this is going to curb teenage
21 smoking, and when you get right down to it, it has
22 very little to do with teenage smoking, it's just a
23 vehicle to get legislation through.

24 Now as it relates to this particular letter, had
25 to do with a conversation that I had had with Dr.

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1 Carl Turner, who at the time was running a program
2 for First Lady Nancy Reagan on drug abuse, and he was
3 very complimentary at that time about what the
4 tobacco industry had been doing and was not -- and
5 because of what the tobacco industry had been
6 doing -- you can go back and check this -- Dr. Turner
7 did not include in his concern for -- as a gateway
8 drug or being part of the problems with teenagers.
9 That's what's all that about. But there was the
10 potential for youth -- for teenage smoking to cause
11 that to be the result of legislative action.

12 Q. Now sir, you also refer here to those -- or the
13 people in the administration who view tobacco as an
14 addictive drug; right?

15 MR. FLYNN: Again it speaks for itself.
16 What -- does it --

17 What's the question? Does it say that?

18 A. It says --

19 MR. FLYNN: It refers there to people who
20 view --

21 A. -- "...there are those in the Administration" --
22 "Waxman's bill," "there are those in the
23 Administration who view tobacco as 'an addictive
24 drug....'"

25 Q. And sir, you went on to say "and who plainly do

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1 not believe our position against teenage smoking;"
2 right?

3 A. Yes, that's true. I think that's probably
4 referring to Surgeon General Koop at that point.

5 Q. And the Surgeon General did not believe the
6 tobacco industry's position on youth prevention; did
7 he?

8 A. Well that's correct. Surgeon General Koop's
9 position is well documented about tobacco.

10 Q. And sir, isn't it a fact that the Surgeon
11 General of the United States eventually came out with
12 a report concerning youth smoking?

13 A. I -- I don't recall it. Probably did.

14 THE WITNESS: Are we through with this?

15 MS. WIVELL: Put it aside.

16 (Plaintiffs' Exhibit 764 was marked
17 for identification.)

18 BY MS. WIVELL:

19 Q. Sir, showing you what's been marked as
20 Plaintiffs' Exhibit 764, this is a document that
21 begins with the Bates number 514502202B; right?

22 A. Yes.

23 Q. It's entitled "AGENDA, Meeting with TI
24 Representatives."

25 A. Yes.

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1 Q. It refers to the 1993 Surgeon General's report,
2 which had not at the time of this memo been issued
3 yet; right?

4 A. Yes.

5 Q. Now despite the fact that the 1993 Surgeon
6 General's report had not been issued at the time
7 Exhibit 764 was written, the industry knew that the
8 report was going to focus on youth smoking; right?

9 A. They must have, yes.

10 Q. And we know that that's the case because it
11 says, "The 1993 Surgeon General's Report will focus
12 on youth smoking."

13 A. Don't know if it's --

14 We don't know that that was the case, but it was
15 thought that --

16 I don't see where it says that we know. It says
17 it will focus.

18 Q. Fair enough.

19 And it goes on to say, "As an industry, we need
20 to be prepared to demonstrate that we are a)
21 concerned about youth smoking; b) successfully
22 working to reduce smoke -- youth smoking rates; and
23 c) responsibly marketing adult products;" right?

24 A. Yes.

25 Q. And the meeting was to try and develop a

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1 strategy to communicate those messages.

2 A. That's correct.

3 Q. Now sir, isn't it true that the year before, the
4 youth smoking budget had gone down at The Tobacco
5 Institute?

6 A. I don't know.

7 Q. Maybe I should rephrase the question and ask it
8 this way: Isn't it true that the same year that this
9 document, Exhibit 764, was written, the budget at The
10 Tobacco Institute devoted to youth programs went
11 down?

12 A. I don't know. What --

13 (Plaintiffs' Exhibit 765 was marked
14 for identification.)

15 BY MS. WIVELL:

16 Q. Sir, showing you what's been marked as
17 Plaintiffs' Exhibit 765, this is a memo that you
18 wrote to members of The Tobacco Institute management
19 committee; right?

20 A. Yes.

21 Q. It's dated November 27th, 1991?

22 A. Yes.

23 Q. For the record, it begins with the Bates number
24 TIMN0049121; right?

25 A. Yes.

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1 Q. And it talks about two initiatives which had
2 been undertaken by The Tobacco Institute, Helping
3 Youth Say No, and It's the Law; right?

4 A. Yes.

5 Q. Now it talks about placing ads concerning these
6 two initiatives; right?

7 A. Yes.

8 Q. Now sir, taking a look at the placement that was
9 suggested in this memo for ads concerning these two
10 campaigns, do you see any placement in youth-oriented
11 magazines?

12 A. No. And I wouldn't -- wouldn't expect to
13 because this -- "Tobacco: Helping Youth Say No," I
14 mean the whole purpose of that program was to
15 communicate to the parents about it, get them
16 involved. I mean there's enough -- I mean the
17 schools are telling the kids about it, peer pressure
18 and other things. So this --

19 Why would it be in a youth magazine if we're
20 trying to communicate with parents?

21 Q. Well sir, isn't the It's the Law campaign also
22 directed at children -- at youth?

23 A. Yes.

24 Q. All right. Is there any indication that the
25 It's the Law campaign was going to be put in

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1 youth-oriented magazines?

2 A. Well I don't know what the mix would be from --
3 from this, I mean, but you'd have to -- I mean you'd
4 have to know what -- which ads are running. If it's
5 Helping Youth Say No, you're also saying that kids
6 don't read Parade, for example, or the U.S.A.
7 Weekend. I'm not -- I don't know.

8 MR. FLYNN: Look on the next page. I think
9 it talks about it.

10 THE WITNESS: Does it?

11 MR. FLYNN: I don't know what that means,
12 but "major retail trade publications."

13 Q. Well sir, certainly --

14 A. Okay. I understand. I understand. I can
15 clarify that.

16 Q. Well let me --

17 A. It's -- It's the Law, see, that's a program that
18 goes to the retailers. That's a program for the --
19 the training of the retailers, the people that are
20 working in the store and that are selling the
21 products, so that wouldn't be any sense in -- in
22 sending out newspaper ads relative to training of
23 people that work in a convenience store or grocery
24 store.

25 Q. Now the last paragraph of Exhibit 765 refers to

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1 the advertising plans for those two programs in 1992;
2 right?

3 A. Uh-huh.

4 THE REPORTER: Your answer?

5 Q. You have to answer out loud, sir.

6 MR. FLYNN: Say yes. You just said
7 "uh-huh."

8 A. Yes. Yes.

9 Q. All right. Let me rephrase the question so we
10 have a clear record.

11 And the last paragraph of Exhibit 765 refers to
12 the advertising plans for those two programs in 1992;
13 right?

14 A. Yes.

15 Q. And the 1992 advertising plan for those two
16 programs was down \$700,000 from the 1991 budget;
17 right?

18 A. Yes.

19 Q. Now sir, isn't it true that you personally have
20 written to legislators in the state of Minnesota
21 claiming that the tobacco industry does not want
22 young people to smoke?

23 MR. FLYNN: I object to the argu --

24 You keep using the word "claiming" like there's
25 some implication to it. But I object, it's

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1 argumentative in that phrase.

2 A. I can't remember if I've written members of the
3 legislature or not. I would suspect that if we
4 were -- like It's the Law program, some states where
5 we wanted them to pass legislation to raise the law
6 or strengthen the penalties for sales to buyers, why
7 yes, we've let the state legislature know about
8 programs, our youth programs.

9 (Plaintiffs' Exhibit 766 was marked
10 for identification.)

11 BY MS. WIVELL:

12 Q. Sir, before we go to Plaintiffs' Exhibit 766,
13 let me ask you this: You would agree that whether
14 you wrote to the legislature or -- legislators or
15 not, that -- no, strike that.

16 If you wrote to the legislators in a particular
17 state, you would agree that it would be important to
18 be accurate in what you claimed in that
19 communication; right?

20 A. Yes, ma'am.

21 Q. Because it would be improper to misrepresent the
22 tobacco industry's intentions when communicating with
23 a state legislator who might be involved with bills
24 that affect, for example, youth smoking.

25 MR. LAYDEN: Objection, vague.

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1 A. I'm not sure I understand the question.

2 Q. All right. Well let's put it this way: If,
3 while trying to promote the position of the tobacco
4 industry, you had written to a state legislator in
5 the state of Minnesota, you would agree it would be
6 important to speak accurately --

7 A. Yes.

8 Q. -- and not -- and not mislead that legislator;
9 right?

10 A. Yes.

11 Q. Now sir, Exhibit 766 is a letter that bears your
12 name at the bottom of the page; right?

13 A. Yes.

14 Q. For the record, it's Bates number TIMN218446.

15 A. Yes.

16 MR. FLYNN: Appears undated, but --

17 Q. This says "LETTER FROM MINNESOTA" at the top of
18 the page; doesn't it?

19 MR. FLYNN: "FOR."

20 A. "FOR." It says "LETTER FOR MINNESOTA" at the
21 top.

22 I don't know if this was sent out. There's no
23 date on it. I don't know if it was for in-house.
24 Maybe you can shed some light on it. Was this
25 something that was given to me? Was it sent out? I

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1 don't know.

2 Q. Well sir, let me ask you: Was this document
3 sent out?

4 A. I do not know.

5 Q. It says "LETTER FOR MINNESOTA" at the top;
6 doesn't it?

7 A. Yes.

8 MR. FLYNN: It says "FOR MINNESOTA."

9 THE WITNESS: "FOR MINNESOTA."

10 MS. WIVELL: I think I said that.

11 MR. FLYNN: You said "FROM."

12 MS. WIVELL: Why don't you take a look at
13 the transcript.

14 Q. Just so we're clear, it says "LETTER FOR
15 MINNESOTA" at the top; doesn't it?

16 A. I can tell this is a -- a draft, because I would
17 put down "Dear Governor" or "State Legislator." If I
18 was writing the Governor of the state, I would say
19 "Dear Governor." If I was writing the speaker, I'd
20 say that. So this must be a draft.

21 Q. Well do you believe that you wrote to the
22 Governor or the legislators of the state of Minnesota
23 concerning the tobacco industry's attempts to
24 discourage young people from smoking?

25 A. I don't know, but I will find out and get back

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1 to you.

2 Q. I would appreciate that, sir. Thank you.

3 A. I do not know.

4 Q. Now sir, here it says in the first paragraph of
5 Exhibit 766 that the tobacco industry is taking new
6 steps to discourage young people from smoking;
7 right?

8 MR. FLYNN: That's part of what it says.

9 A. Where are we on this letter? You have to help
10 me here. We're on which -- which --

11 Q. In the first paragraph, sir.

12 A. First paragraph. All right.

13 Q. It says "the tobacco industry is taking new
14 steps to discourage young people from smoking;"
15 right?

16 A. That is what it says.

17 Q. It says "and to prevent their access to
18 cigarettes;" right?

19 A. That's correct.

20 Q. Now you go on in the second paragraph to ask the
21 rhetorical question "Why?" Isn't that true?

22 A. Yes, that's true. That's what the document
23 says.

24 Q. And you say, "The bottom line is, the tobacco
25 industry does not want young people to smoke."

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1 A. That's correct.

2 Q. Now sir, do you remember sending a letter that
3 said substantially the same thing to Senator Elect
4 Paul Wellstone?

5 A. Well as I -- as I said earlier, if we were
6 rolling out a campaign, we would probably send the
7 letter to the elected representatives, the Governor,
8 the people, so that they would be aware of it, so it
9 wouldn't surprise me if it went to Senator Elect
10 Wellstone. Great American.

11 (Plaintiffs' Exhibit 767 was marked
12 for identification.)

13 BY MS. WIVELL:

14 Q. Sir, showing you what's been marked as
15 Plaintiffs' Exhibit 767, this is a letter that you
16 wrote December 11th, 1990 to Paul Wellstone in the
17 United States Senate; right?

18 A. Yes.

19 Q. And sir, if you take a moment to review it, you
20 would agree that it is substantially the same format
21 as the letter that's addressed "Dear Governor or
22 State Legislator" which we were just looking at,
23 Exhibit 766; right?

24 A. Much shorter. Right?

25 Q. Substantially the same format though; right?

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- 1 A. Much shorter.
- 2 Format? Well let's see. I'd have to do a
- 3 side-by --
- 4 No, I wouldn't say so. I mean it's much
- 5 shorter.
- 6 Q. All right.
- 7 A. But that's all right.
- 8 Q. Let's do it this way.
- 9 A. All right.
- 10 Q. In the first paragraph you told Senator Elect
- 11 Wellstone that the tobacco industry is taking a
- 12 number of new additional steps to discourage young
- 13 people from smoking and to prevent their access to
- 14 cigarettes.
- 15 A. Yes, ma'am.
- 16 Q. Right?
- 17 And then, again in the second paragraph, you ask
- 18 the rhetorical question "Why?" Right?
- 19 A. Yes.
- 20 Q. And then you say, "Because the tobacco industry
- 21 does not want young people to smoke." Right?
- 22 A. That's correct.
- 23 Q. Now sir, you actually sent this letter to
- 24 Senator Wellstone; didn't you?
- 25 A. Yes.

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1 Q. (Coughing.) Pardon me.

2 Did you tell Senator Wellstone that one of the
3 member companies of the tobacco industry that you
4 referred to here in Exhibit 767 was trying to focus
5 its marketing activities on young adult smokers?

6 MR. FLYNN: I object, it's argumentative,
7 it speaks for itself. Obviously that was not in
8 here; it's self-evident.

9 A. Madam, as I -- as I said earlier, I had no
10 knowledge of it. I was speaking here only as The
11 Tobacco Institute. I'm not aware of those other
12 documents you're talking about.

13 Q. Well sir, actually you were speaking on behalf
14 of the tobacco industry when you wrote this letter to
15 Senator Wellstone; weren't you?

16 A. The tobacco industry does have a policy that
17 they did want to take additional steps to prevent the
18 access of cigarettes to the youth, to young people,
19 and i.e., that's the reason for the program. They
20 paid for the program. It's their program through The
21 Tobacco Institute.

22 (Plaintiffs' Exhibit 768 was marked
23 for identification.)

24 BY MS. WIVELL:

25 Q. Sir, showing you what's been marked as

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1 Plaintiffs' Exhibit 768, this is a document that
2 begins with the Bates number 507241613; right?

3 A. Yes, ma'am.

4 Q. And it's entitled "CAMEL Y&R ORIENTATION."

5 A. Yes, ma'am.

6 Q. All right. Now, sir, would you turn to the
7 second page of Exhibit 768.

8 MR. FLYNN: For the record, it looks like
9 it's a Reynolds document. Talks about 1990. But
10 okay.

11 A. Second --

12 It's what, 1980?

13 MR. FLYNN: "Strategic Importance."

14 A. I don't see any --

15 Q. Sir, why don't you just turn to the second page
16 of the document.

17 A. I don't see any date.

18 Oh, okay. Yes.

19 Q. All right. And there, the fourth point is
20 "CAMEL 1999 Over" -- 19 -- I'm sorry.

21 A. "1990."

22 Q. There you see reference to "CAMEL 1990
23 Overview;" right?

24 A. Yes.

25 Q. So sir, it would be fair to say that this

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1 document is relatively contemporaneous with the
2 letter that you wrote to Paul Wellstone; isn't that
3 true?

4 A. They both were done in the year 1990.

5 Q. All right. Let's take a look at Exhibit 768,
6 and why don't you page through the first half of
7 it --

8 A. Page through the first half.

9 Q. -- so you can get a flavor for the document.

10 A. Do you want me to do the whole first half?

11 Q. Well since it's relatively -- since there's not
12 much on each page. I don't think it will take that
13 long.

14 A. Okay. I think I got sort of the sense of the
15 cigarette -- okay.

16 Q. Sir, turning back to the second page of the
17 document, --

18 A. All right.

19 Q. -- the exhibit -- or the second page of Exhibit
20 768 talks about the strategic importance of YAS and
21 summary of YAS learning; right?

22 A. Yes.

23 Q. And it talks about guidelines for effective
24 marketing to YAS.

25 A. Yes.

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- 1 Q. Now sir, if you turn to the page that ends with
2 Bates number 616, it says "YOUNGER ADULT SMOKERS;"
3 doesn't it?
- 4 A. Six sixteen. I got my papers upside down.
5 Yes, that's what the document says.
- 6 Q. And younger adult smokers abbreviated is YAS;
7 right?
- 8 A. I don't know, but I would assume so.
- 9 Q. All right. If you turn to the next page, it
10 refers to YAS as the only source of replacement
11 smokers; right?
- 12 A. That's what the document says.
- 13 Q. And it says that less than one-third of smokers
14 start after age 18.
- 15 A. That's what it says.
- 16 Q. And it goes on to say only five percent of
17 smokers start after age 24.
- 18 A. That's what it says.
- 19 Q. On the next page it talks about the young adult
20 smoker strategic importance; doesn't it?
- 21 A. The next page? That's what it says.
- 22 Q. And on the next page it talks about the amount
23 of business R. J. Reynolds would lose if its decline
24 among young adult smokers continued; right?
- 25 A. That's what it says.

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1 Q. Now could you turn to the page that ends with
2 the Bates number 641.

3 A. Turn to the page of what --

4 Q. That ends with Bates number 641.

5 A. Six forty-one.

6 Q. There do you see a graph entitled "TOP TWO
7 INTERESTS?"

8 A. Yes.

9 Q. And if you look at the graph, it -- it gives
10 information about the interests of this YAS group;
11 right?

12 A. Yes.

13 Q. And according to this graph, the top interests
14 of the people in this category are rock and roll,
15 dancing parties, motorcycles and cars; right?

16 MR. FLYNN: I'm not sure that's the way to
17 read it. But if it reads that way, you tell her.

18 A. It doesn't read that way to me. You're
19 saying -- what's the -- I don't know --

20 I'm not sure what the X and the Y axes are on
21 this. Do you know?

22 Q. All right. Well sir, the -- the chart going up
23 the page refers to the percentage of YAS; right?

24 A. Okay.

25 Q. And sir, the graph going to the left shows

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1 smoking incidence; right?

2 MR. FLYNN: Or on that axis, whatever that
3 means, "SMOKING INCIDENCE."

4 A. I don't know what that --

5 Q. And at least what's graphed here, the top
6 interests were up in the upper right-hand corner of
7 the graph.

8 MR. FLYNN: Well --

9 A. Is that --

10 See, I don't know what this means. I don't know
11 what age group --

12 MR. FLYNN: Tell her -- that's fine.

13 A. -- this is.

14 I don't know. I don't know.

15 MR. FLYNN: Somebody knows what it means.

16 A. Sorry. I don't know what it means.

17 Q. Now sir, do you understand from reviewing this
18 document that one of its purposes was to try and
19 determine how R. J. Reynolds could market its
20 cigarette products to this YAS group?

21 MR. FLYNN: Again, it speaks for itself.

22 A. I don't know. As -- as I said, I went through
23 about 20 pages of a 300-page document, so I don't
24 know what this document says.

25 Q. Well sir, the flavor of what you got from

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1 looking through those pages was that this was a
2 marketing document trying to discern how to determine
3 the best way --

4 A. Yes, yes, this is a marketing document I would
5 think.

6 Q. And one of its purposes was -- was to develop
7 the profile for the young adult smoker so that
8 cigarettes could be marketed to that group; right?

9 A. I don't know what its purpose is.

10 Q. Why don't you put that document aside for a
11 moment, sir.

12 By the way, --

13 A. Yes.

14 Q. -- when you were working on your youth
15 prevention program, did anyone at R. J. Reynolds tell
16 you that they were working on a marketing program
17 directed toward young adult smokers?

18 A. R. J. Reynolds' statement of policy at the
19 Executive Committee has always encouraged us to go
20 forward on youth programs, and that is what we've
21 done. That's been their stated policy at the
22 Institute.

23 Q. Well did anyone ever tell you that R. J.
24 Reynolds wanted to leverage its cigarettes so that
25 they would be smoked more heavily by younger male

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1 smokers?

2 A. No, ma'am.

3 (Plaintiffs' Exhibit 769 was marked
4 for identification.)

5 BY MS. WIVELL:

6 Q. Sir, showing you what's been marked as
7 Plaintiffs' Exhibit 769, this is a document that
8 begins with the Bates number 507798137; right?

9 A. Yes, ma'am.

10 Q. It's entitled "U.S. CIGARETTE MARKET IN THE
11 1990S." Right?

12 A. Yes, ma'am.

13 Q. It's dated June 21st, 1990.

14 A. Yes.

15 MR. FLYNN: Produced by Reynolds.

16 THE WITNESS: Where does it say produced by
17 Reynolds?

18 MR. FLYNN: Well it's stamped on it.

19 THE WITNESS: I see.

20 MR. FLYNN: It appears that they put that
21 stamp on it.

22 THE WITNESS: All right.

23 Q. Sir, could you turn to the page that ends with
24 Bates number 194.

25 A. Yes, ma'am.

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1 Q. There at the bottom of the page begins a
2 paragraph, "RJRT has decided to leverage the younger
3 male identity group with Camel because of its strong
4 appeal to this group;" right?

5 A. That's what the document says, yes.

6 Q. Sir, while you were working on your youth
7 prevention program, did anyone ever tell you that RJR
8 had decided to leverage its Camel cigarettes into
9 younger male smokers -- into the group of younger
10 male smokers?

11 A. No.

12 Q. Well sir, did anyone ever tell you that R. J.
13 Reynolds viewed its -- I'm sorry, strike that.

14 At the same time that you were developing your
15 youth prevention program, did anyone ever tell you
16 that R. J. Reynolds wanted to be a prop in the hands
17 of -- wanted its cigarettes to be a prop in the hands
18 of young smokers?

19 MR. FLYNN: I -- I object to the
20 implication. You're now transferring what they're
21 talking about as young smokers to under-age smokers,
22 and I don't think that's been established.

23 But if you can answer the question -- I don't
24 think --

25 A. The answer to the question is no, I've never

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1 been communicated about this document.

2 Q. All right. Well that document aside, sir, did
3 anyone from R. J. Reynolds ever tell you that they
4 wanted their cigarettes to be props in the hands of
5 rockers or punkers or burnouts?

6 A. No --

7 Q. Young people?

8 A. No one has ever had that conversation with me.

9 Q. Sir, could you go back to Plaintiffs' Exhibit
10 768.

11 A. Seven sixty-eight.

12 MR. FLYNN: That's this fat one here.

13 Q. Could you turn to the page that ends with Bates
14 number 676.

15 A. Is this --

16 MR. FLYNN: That's it.

17 Q. I'm sorry.

18 A. 768.

19 Q. Let me rephrase the question.

20 A. 768.

21 Q. I don't think you'll -- I don't think you'll
22 find it, so let me restate the question.

23 A. I got 768.

24 Q. Oh, you do? Okay.

25 A. Is that Bud Light?

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1 MR. FLYNN: A picture of Bud Light.
2 A. Bud Light and the dog?
3 Q. No, I'm sorry. I said it wrong. It's my
4 dyslexia acting up again. I apologize.
5 A. Sure.
6 Q. Could you turn to the page that ends with 677.
7 A. Six -- 677. "THEY KNOW THE ROLES."
8 Q. Sir, I think it begins --
9 A. Is that it?
10 Q. -- FUBYAS.
11 A. Yes.
12 Q. Okay.
13 A. Okay.
14 Q. And it talks about "SOCIAL GROUP SPECTRUM;"
15 right?
16 A. Yes.
17 Q. And it says, "With regard to 'Social Group'
18 participation, FUBYAS tend to live in a MOVIE;"
19 right?
20 MR. FLYNN: You read it right. Has she
21 read it right? Is that what it says?
22 A. That's what it says. I don't know what it
23 means, but that's what it says.
24 Q. All right. It says "THEY KNOW THEIR ROLES, THEY
25 KNOW THE SCRIPT, THEY KNOW THE COSTUMES, THEY KNOW

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1 THE PROPS."

2 A. That's what it says.

3 Q. And it goes on to say, "WE WANT TO SUPPLY ONE OF
4 THE PROPS -- THEIR BRAND -- THEIR BRAND OF
5 CIGARETTES."

6 A. That's what it says.

7 Q. And no one ever shared this marketing purpose
8 with you while you were working on your youth
9 prevention program; did they?

10 A. No, ma'am.

11 Q. Now sir, --

12 MR. FLYNN: I think she's done with this.

13 MS. WIVELL: Why don't we put that aside.

14 THE REPORTER: We have to change tape. Off
15 the record, please.

16 (Discussion off the record.)

17 BY MS. WIVELL:

18 Q. Sir, while you were working on your youth
19 prevention program for The Tobacco Institute, did
20 anyone from Brown & Williamson ever tell you that
21 they -- their marketing plan for Kool focussed on
22 attracting new, young smokers?

23 A. No, ma'am.

24 (Plaintiffs' Exhibit 770 was marked
25 for identification.)

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1 BY MS. WIVELL:

2 Q. Sir, showing you what's been marked as
3 Plaintiffs' Exhibit 770, this is a document that
4 begins with the Bates number B1546463; right?

5 A. Yes, ma'am.

6 Q. Why don't you take a minute and review the
7 document.

8 MR. FLYNN: This is a B.A.T. document.

9 Q. And sir, I'm only going to be focusing on the
10 first four pages.

11 A. First four pages.

12 MR. FLYNN: With a date of January 20,
13 '94. Twenty -- 26-94.

14 THE WITNESS: This is '94 you say?

15 MR. FLYNN: It's actually a fax date, but
16 it's a date anyway.

17 A. Okay. This is through page four, I think, point
18 34, is that -- is that as far as you'd like me to
19 go? Is that --

20 Q. I think if you've gone that far, that's fine.

21 A. Okay.

22 Q. Now sir, having reviewed this document, it
23 concerns a meeting that took place between Brown &
24 Williamson personnel and personnel from B.A.T
25 Industries; right?

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- 1 A. I don't know. I really don't. I don't know.
- 2 Q. Okay. For the record, this document is dated
- 3 January 26, 1994; right?
- 4 A. Right.
- 5 Q. And it's on B.A.T Industries stationery on the
- 6 first page; right?
- 7 MR. FLYNN: A fax sheet, but whatever.
- 8 Q. On the first page, sir.
- 9 A. Yeah, it says "Brown & Williamson Plan 1994-
- 10 1998."
- 11 Q. I think you're on the second page, sir.
- 12 A. Oh.
- 13 Q. Could you turn to the first page.
- 14 A. Okay.
- 15 Q. The first page --
- 16 A. Yes.
- 17 Q. -- is on B.A.T Industries' --
- 18 A. That's correct.
- 19 Q. -- letterhead; right?
- 20 A. Yes, ma'am.
- 21 Q. All right. And if we turn to the second page,
- 22 the heading of the document is "Brown & Williamson
- 23 Plan 1994-1998;" right?
- 24 A. Yes, ma'am.
- 25 Q. And it refers to a meeting that was held to

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1 discuss the Brown & Williamson plan; right?

2 A. Yes, ma'am.

3 Q. Now if we turn to point fifteen, there is
4 reference to the plan concerning Kool cigarettes;
5 right?

6 A. Yes.

7 Q. And it says there, "The Plan assumes that the
8 marketing focus for Kool continues to be to attract
9 new young smokers, while existing -- while meanwhile
10 existing" -- strike that.

11 And it says there, "The Plan assumes that the
12 marketing focus for Kool continues to be to attract
13 new young smokers, meanwhile existing consumers are
14 being lost;" right?

15 A. Yes, ma'am, that's what the document says.

16 Q. All right. Did anyone at Brown & Williamson
17 ever share with you an objective or a plan that
18 focussed marketing for Kool cigarettes on attracting
19 new young smokers?

20 A. No.

21 MS. WIVELL: All right. Why don't we pause
22 for the day.

23 THE REPORTER: Off the record, please.

24 (Deposition recessed at 5:05 o'clock p.m.)

25

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1 C E R T I F I C A T E

2 I, Richard G. Stirewalt, hereby certify
3 that I am qualified as a verbatim shorthand reporter;
4 that I took in stenographic shorthand the testimony
5 of SAMUEL D. CHILCOTE at the time and place
6 aforesaid; and that the foregoing transcript
7 consisting of pages 1 through 264 is a true and
8 correct, full and complete transcription of said
9 shorthand notes, to the best of my ability.

10 Dated at Washington, D.C., this 18th day of
11 September, 1997.

12

13

14

15 RICHARD G. STIREWALT

16 Registered Professional Reporter

17 Notary Public

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1 C E R T I F I C A T E

2 I, SAMUEL D. CHILCOTE, the deponent, hereby
3 certify that I have read the foregoing transcript
4 consisting of pages 1 through 264, and that said
5 transcript is a true and correct, full and complete
6 transcription of my deposition except:

7

8

9

10

11

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14

15 SAMUEL D. CHILCOTE

16 Deponent

17

18 Sworn and subscribed to before me this day
19 of , 1997.

20

21

22

23 Notary Public

24

25 My commission expires .

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